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In the
Supreme Court of the United States

OCTOBER TERM, 1969

No. 1242

DENNISON MANUFACTURING COMPANY,
PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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No.

DENNISON MANUFACTURING COMPANY,
PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Dennison Manufacturing Company prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit.

Opinion Below

The Opinion of the Circuit Court is reported at .... F.2d .... A copy of this opinion is appended hereto. Appendix A infra.

Jurisdiction

The Judgment was entered on December 10, 1969. A petition for rehearing was denied on January 12, 1970. A copy

of the denial is appended hereto. Appendix B infra. The jurisdiction of the Court is invoked under 28 U.S.C.A. Sec. 1254.

Applicable Statutory Provisions

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 et seq.) are set forth in Appendix C infra.

Questions Presented

I. May the National Labor Relations Board amend an unfair labor practice complaint in the absence of a motion to amend by a party to the proceedings and in the absence of a provision permitting it to do so in its own published rules and regulations.

II. Is an employer guilty of an unfair labor practice where the labor organization representing its employees acts through representatives elected by the employees, but does not meet with the employees as a body and does not collect dues.

Statement of the Case

Pursuant to a Decision and Direction of Election by the Regional Director of the National Labor Relations Board, an election was held on June 15, 1965 among the employees of Dennison Manufacturing Company[1] in Framingham and Marlboro, Massachusetts to determine whether the employees wished to be represented for the purposes of collective bargaining by the United Papermakers and Paperworkers, AFL-CIO.[2] The results were that the Union was rejected as the employee representative. (A. 825)

On June 17, 1965, the Union filed objections to the con-

[1] Hereinafter referred to as the Company.
[2] Hereinafter referred to as the Union.

duct of the election, and on July 19, 1965, the Union filed a charge alleging among other things that the Company "has dominated and interfered with the information and administration of a labor organization known as Dennison Employees Committee and has contributed financial and other support to it." (A. 824; 826)

The Regional Director with the full cooperation of the Company thoroughly investigated the objections and the charge and on September 7, 1965 issued a decision in which he found no merit to the Union's allegation that the Company had improperly coerced employees through false and misleading statements. On September 8, 1965 the Regional Director issued an order consolidating the representation case with the unfair labor practice case accompanied by a complaint which alleged that Dennison had rendered unlawful aid, assistance and support to the Dennison Employees Committee[3] by the following conduct:

> "(a) by recognizing the Committee as the exclusive bargaining representative for all of Respondent's employees, exclusive of supervisory personnel
>
> (b) by contributing financial and other support to the Committee
>
> (c) by enforcing and maintaining an oral enforceable contract with the Committee providing for wages, hours and working conditions for Respondent employees." (A. 825-832; 844-848)

The allegations contained in the Union's charge with respect to domination and interference with the formation and administration of the Committee were not included in the complaint.

[3] Hereinafter referred to as the Committee.

On September 21, 1965 the Company filed a Motion for Bill of Particulars, requesting among other items specific information as to "other support" given the Committee. (A. 850-852)

Pursuant to an order of the Trial Examiner, General Counsel answered as follows:

> "Regarding the question of 'other support' as requested by Respondent, General Counsel answers that such reference is to support, such as the use of Respondent's office and clerical staff to conduct the affairs of the Committee, by allowing the Committee officials access to employees on Company premises and on Company time during the pendency of the various petitions referred to in the Complaint and also in endorsing the Committee and its so-called achievements to employees during the pendency of the various petitions referred to in the Complaint." (A. 857)

Hearings were held on February 1, 3 and 4 in 1966. At one point during the hearing there was considerable discussion as to the scope of the complaint and there was complete concurrence that domination was not alleged in the complaint. (A. 7)

On May 2, 1966 the Trial Examiner issued his decision finding that the Company had unlawfully assisted the Committee. The Trial Examiner specifically refused to consider the question of domination. (A. 7)

The Company and the Committee filed exceptions to the Trial Examiner's findings of unlawful assistance and the Union filed cross exceptions to the Trial Examiner's failure to find domination. On November 1, 1966 the Board issued a decision in which it stated that the complaint was sufficiently broad in scope to include domination. The Board ordered that the case be remanded to the Trial Examiner

for a second hearing to permit the parties to adduce evidence on that issue. (A. 1158)

Following a second hearing the Trial Examiner on April 20, 1967 issued a Supplemental Decision in which he found that the Company had dominated the Committee. (A. 1140-1155).

The Company and the Committee filed exceptions to that decision, and on December 27, 1967 the Board issued its decision finding domination and ordering the disestablishment of the Committee. (A. 1157-1160)

Upon the Board's petition for enforcement, the United States Court of Appeals for the First Circuit under the authority of Section 2112 of Title 28 of the United States Code enforced the Board's order. In so doing, the Court found, contrary to the Board's argument, that the scope of the complaint as issued by General Counsel did not encompass domination. The Court held, however, that the Board does have the authority to amend a complaint sua sponte and in substance did so in the instant case.

The Company filed a Petition for Rehearing citing Section 102.17 of the Board's Rules and Regulations 29 C.F.R. #102.17 which sets forth the procedure by which complaints are amended. The Petition for Rehearing was denied by the Court.

Reasons for Granting the Writ

I. The First Circuit in holding in that the Board may sua sponte amend an unfair labor practice complaint has decided an important question of federal law which has not been settled by this Court. The issue is of utmost importance in the administration of the National Labor Relations Act.

In 1947, the National Labor Relations Act was amended to add, among other provisions, Section 3(d), the text of

which is appended hereto. Appendix C infra. By enacting Section 3(d) Congress intended to effect a separation of the prosecuting and adjudicating function within the Board. *Haleston Drug Stores, Inc.* v. *NLRB*, 187 F2d 118, 421 (9 Cir. 1951) Cert. denied 342 U.S. 815 (1951). The Board itself has taken the position that for it to consider any issue which the General Counsel had decided to omit would be inconsistent with congressional intent and would nullify the final authority vested in the General Counsel to investigate charges, frame and issue a complaint and prosecute the same before the Board. *Frito Co.* v. *NLRB* F2d 458 (CA 9 1964). The Court in *Frito* disagreed with the Board as did the First Circuit in the instant case. In spite of this, the Board has not wavered from its position. Petitioner has found no other case in which the Board has sua sponte amended its complaint and in fact, it did not do so in this case. It merely held that the complaint as issued by General Counsel included an allegation of domination. With this the First Circuit disagreed.

Section 102.17 of the Board's rules and regulations state:

> Amendment - Any such complaint may be amended upon such terms as may be deemed just, prior to the hearing by the regional director issuing the complaint; at the hearing and until the case has been transferred to the Board pursuant to section 102.45, upon motion, by the trial examiner designated to conduct the hearing; and after the case has been transferred to the Board pursuant to section 102.45, at any time prior to the issuance of an order based thereon, upon motion, by the Board.

The existence of this rule was called to the attention of the First Circuit in the Petition for Rehearing. The Company

argued that even if the Board had the statutory authority to amend a complaint on its own motion, it could not do so without first amending its rules and regulations in accordance with the provisions of the Administrative Procedure Act. The First Circuit held that the fact that the Board may grant an amendment upon motion of a party does not mean that it may not also sua sponte amend the complaint under 10(b) of the Act, the text of which is appended hereto. Appendix C infra. The Board has been delegated the authority to administer the National Labor Relations Act. Its position has always been and apparently still is that it can only amend a complaint on motion. For a court to hold, as the First Circuit has, that the Board in substance has amended the complaint, which the Board itself says it cannot do, places parties to Board proceedings as well as members of the bar practicing before the Board in a position where they do not know the procedure that will govern a particular case. The orderly administration of the Act requires the resolution of this issue.

II. The First Circuit held that the following factors indicate Employer domination.

1. The labor organization's constituents (employees) merely vote for representatives to the general body.

2. The general body has no general meetings with employees.

3. The employees pay no dues.

4. The employees have no opportunity to discuss issues before they are resolved, and do not ratify decisions after they are made.

The holding that the above factors indicate domination

is in conflict with a decision rendered by the Sixth Circuit in *Modern Plastics Corp.* v. *National Labor Relations Board* 379 F2d 201 (CA6 1967)

In that case, the Court held that these same factors though being evidence of a weak labor organization did not constitute domination. In that case as in the instant case, decisions such as not to collect dues and not to have membership meetings were made by the labor organization and not by the employer. Under these circumstances the employer may not be held responsible.

Conclusion

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals
For the First Circuit

No. 7304.

NATIONAL LABOR RELATIONS BOARD,

PETITIONER,

v.

DENNISON MANUFACTURING COMPANY ET AL.,

RESPONDENTS.

APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before ALDRICH, *Chief Judge*,
WOODBURY*, *Senior Circuit Judge*, and
COFFIN, *Circuit Judge*.

Baruch A. Fellner, Attorney, with whom *Arnold Ordman*, General Counsel, *Dominick L. Manoli*, Associate General Counsel, *Marcel Mallet-Prevost*, Assistant General Counsel, and *Elliott Moore*, Attorney, were on brief, for petitioner.

Louis Chandler, with whom *Alan S. Miller* and *Stoneman & Chandler* were on brief, for Dennison Manufacturing Company, respondent.

Robert Weihrauch for Dennison Employees Committee, respondent.

December 10, 1969.

COFFIN, *Circuit Judge*. On losing a representation election in June 1965 at two Massachusetts plants of the Dennison Manufacturing Company [Company], the United Papermakers and Paperworkers, AFL-CIO [Papermakers] objected to the conduct of the election and charged that the Company had "dominated and interfered with the formation and administration" of the 46-year-old Dennison Employees Committee [Committee] and had "contributed

* By designation

financial and other support to it." The Regional Director of the National Labor Relations Board subsequently consolidated the representation case and the unfair labor practice case and issued a complaint alleging that the Company had rendered unlawful aid, assistance, and support to the Committee in violation of section 8(a)(2) of the National Labor Relations Act, 29 U.S.C. § 151 *et seq* (1964).[1]

The trial examiner found that there was illegal assistance —indeed, "massive assistance . . . far beyond the point of tolerance"—but in view of the limited allegations in the complaint and the stance of General Counsel during the hearing (*see infra*), he abstained from finding "domination" of the Committee by the Company. Before the Board, the Papermakers excepted to the examiner's refusal to find domination. General Counsel filed no exceptions or motions to amend its complaint even at this stage, *see* 29 C.F.R. § 102.17, but rather in its brief urged the Board to find domination.

The Board, despite the fact that the complaint's allegation of a section 8(a)(2) violation was specifically limited to the acts of recognition, financial support, and maintenance of an oral contract, held that the complaint was sufficiently broad to encompass domination. It recognized, however, that the Company had not been confronted with this issue at the first hearing and so, in the interest of fairness, remanded the case to the trial examiner for further hearing on the domination issue so that the Company could raise any defenses and the parties could proffer additional evidence and argument.

Thereupon, a year after the first hearing, a second hearing was held before the same trial examiner, which resulted in a finding of domination and a recommendation that the

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[1] Section 8(a)(2) provides, in relevant part, that

"It shall be an unfair labor practice for an employer—to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: . . . ."

Committee be disestablished and that a new election be held to determine whether the Papermakers represented a majority of the Dennison employees. The Board adopted the findings and recommendations of the hearing examiner —168 NLRB No. 131 (1967)—and now seeks to enforce its order.

The initial question before us is whether the Board's remand for a second hearing was lawful. The Board based its authority for that remand on its conclusion that "the allegation of a violation of Section 8(a)(2) in the complaint is sufficient to include an allegation of employer domination." We disagree.

The Papermakers' charge against the Company alleged both domination and the contribution of financial and other support. The complaint issued by the Regional Director some seven weeks later alleged, in paragraph 7, that the Company was "rendering unlawful aid, assistance and support to the Committee" by (a) recognizing the Committee as exclusive bargaining agent, (b) contributing financial and other support to it, and (c) maintaining an oral contract with the Committee providing for wages, hours, and working conditions. Paragraph 8 of the complaint alleged: "By the acts described above in paragraph 7, Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(2)." No reference to domination was included although, as the trial examiner properly noted, and General Counsel concedes, the word has achieved "the stature of a word of art". This deleted part of the original charge was not mere verbiage, nor could its deletions have been inadvertent: section 8(a)(2) has traditionally been viewed as encompassing two distinct types of violations, for proof of illegal assistance or interference results in the withholding of recognition until proper certification, whereas proof of domination signals the death knell for a labor organization. *The Carpenter*

Steel Co., 76 NLRB 670 (1948); *Hershey Metal Products Co.*, 76 NLRB 695 (1948).

Two of the acts alleged in the complaint—recognition and maintenance of an oral contract—give only an attenuated inference of domination, despite the requirement that the complaint give a clear and concise description of the acts which are claimed to constitute unfair labor practices. 29 C.F.R. § 102.15. The third allegation, "contributing financial and other support," used the precise words of the part of section 8(a)(2) *not* dealing with domination. In response to the Company's motion for a bill of particulars concerning the "other support" allegation, the General Counsel stated that the reference was to such conduct as allowing the Committee to use company office and clerical staff, permitting Committee officials access to employees on company premises and time, and endorsing the Committee and its achievements during pendency of various petitions filed by other unions. Again there was no direct reference to nor clear inference of a charge of domination. The trial examiner ruled that only illegal assistance had been alleged and so limited the evidence, to which the General Counsel took no exception.[2]

It was worse than bad procedural manners for the General Counsel to play cosy on this record by simply arguing for domination in its brief to the Board; this was a matter of substance. Unlike the situation in *Owens-Corning Fiberglas Corp.* v. *N.L.R.B.*, 407 F.2d 1357, 1361 (4th Cir. 1969), chiefly relied on by the Board in its brief, the distinction between a finding of domination and assistance is not a "distinction . . . without a difference." *See The Carpenter*

[2] The General Counsel was obviously flirting with the concept of domination but did not, via a motion to amend, propose marriage. His response to the trial examiner's ruling was Delphic: "I do not want to sound disrespectful, but I do know what I'm doing here, and I am aware of what the Complaint alleges. I am aware of . . . the words I'm using, and I'll leave it at that, Mr. Trial Examiner."

Steel Co., supra. Nor could it be said that paragraph 8 of the complaint—alleging specific acts violative of section 8(a)(2)—has any efficacy as a "catchall" clause. *Cf. Boyle's Famous Corned Beef Co.* v. *N.L.R.B.*, 400 F.2d 154, 161-163 (8th Cir. 1968). The Board's syllogism is that because some acts were alleged which violate section 8(a)(2), and because that section also proscribes domination, domination was alleged. However, a specification of parts which are included in the whole is not a specification of the whole; when one orders apples at a market, he does not expect to be confronted with pears, although both are fruit. We have found no cases allowing the expansive interpretation of a complaint which the Board now urges on us.[3] We conclude that proper procedure called for an amendment which, under the regulations, can be made after submission of a case to the Board. 29 C.F.R. § 102.17.

Our question therefore is whether, in light of General Counsel's failure to seek this substantive amendment, the Board can, in effect, *sua sponte* do it for him. The Company argues that by so acting the Board "usurped the exclusive powers of the General Counsel in violation of section 3(d)," which provides:

> "The General Counsel of the Board . . . shall have final authority, on behalf of the Board, in respect of the . . . issuance of complaints . . . and in respect of the prosecution of such complaints before the Board." 29 U.S.C. § 153(d) (1964).

This section became part of the National Labor Relations Act with the passage of the Taft-Hartley Act in 1947. Section 3(d) accompanied other provisions designed to sepa-

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[3] *See e.g., S.S. Kresge Co., K-Mart Division* v. *N.L.R.B.*, —— F.2d ——, —— (6th Cir. 1969); *Engineers & Fabricators, Inc.* v. *N.L.R.B.*, 376 F.2d 482, 485-486 (5th Cir. 1967); *N.L.R.B.* v. *Majestic Weaving Co.*, 355 F.2d 854, 861-862 (2d Cir. 1966); *N.L.R.B.* v. *H. E. Fletcher Co.*, 298 F.2d 594, 600 (1st Cir. 1962).

rate the functioning of the Board from the functioning of the General Counsel, thereby leaving the prosecutorial role to the General Counsel while limiting the Board to the performance of quasi-judicial functions. H.R.Rep. No. 510, U.S. Code Congressional Service, 80th Cong., 1st Sess. (1947), p. 1143.

Were this all the statute provided, we would have no difficulty concluding that the Board lacked power to amend on its own motion. However, there remains section 10(b), a part of the original Wagner Act which was not deleted when section 3(d) was added in 1947. Section 10(b) provides that any complaint "may be amended by . . . the Board in its discretion at any time prior to the issuance of an order based thereon." 29 U.S.C. § 160(b) (1964).

We are fully aware that there may be some inconsistency between these two provisions. *See International Union of Electrical, Radio, and Machine Workers* v. *N.L.R.B.*, 289 F.2d 757, 760-762 (D.C.Cir. 1960). However, when the Board's action supports the position taken by the General Counsel, we see no conflict between section 3(d) and 10(b), no usurpation of the General Counsel's prosecutorial function.[4] To read section 10(b) out of the Act in the absence

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[4] *Accord*: *International Union of Electrical, Radio, and Machine Workers* v. *N.L.R.B.*, 289 F.2d 757, 760-762 (D.C. Cir. 1960); *United Steelworkers of America* v. *N.L.R.B.*, 393 F.2d 661, 664 (D.C. Cir. 1968); *Wellington Mill Division, West Point Mfg. Co.* v. *N.L.R.B.*, 330 F.2d 579, 590 (4th Cir. 1964), *cert. denied*, 379 U.S. 882 (1964); *Piasecki Aircraft Corp.* v. *N.L.R.B.*, 280 F.2d 575, 586-588 (3d Cir. 1960), *cert. denied*, 364 U.S. 933 (1961); *N.L.R.B* v. *Barbrook Mfg. Co.*, 220 F.2d 832, 834 (5th Cir. 1955).

We venture no opinion on whether the Board can make an amendment pursuant to section 10(b) which the General Counsel opposes. *But see American Newspaper Publishers Ass'n* v. *N.L.R.B.*, 193 F.2d 782, 798-800 (7th Cir. 1951), *cert. denied*, 344 U.S. 816 (1952); *Frito Company, Western Division* v. *N.L.R.B.*, 330 F.2d 458, 465 (9th Cir. 1964), explained more fully in *Retail Clerks Union* v. *Food Employers Council, Inc.*, 351 F.2d 525, 530 & n. 4 (9th Cir. 1965) and *Associated Home Builders of Greater East Bay, Inc.* v. *N.L.R.B.*, 352 F.2d 745, 752-754 (9th Cir. 1965); *American Boiler Mfg. Ass'n* v. *N.L.R.B.*, 366 F.2d 815, 821 (8th Cir. 1966).

of any conflict with section 3(b) would be not only an act of judicial repeal but would also deprive the Board of any power to act in the public interest in just such a circumstance as this, where the General Counsel has indicated his position but misconceived his procedural approach.

The question remains whether we render a disservice either to the Company in this case or to the future orderly conduct of Board proceedings by treating the Board's broad interpretation and remand as a *sua sponte* exercise of its amendment power under section 10(b). We think not. The issue of the scope of the complaint was a live one when the case was submitted to the Board, for the Papermakers had excepted to the trial examiner's failure to find domination and the General Counsel had sought through its brief to the Board a finding of domination. The Board did not, therefore, unearth an issue which the Company had no reason to know of in advance. More importantly, the action taken served the purposes of an amendment; not only was a new hearing had on the new charge, but the Company was fully apprised, as a result of the first hearing, of the evidence which might be weighed against it. Were we to say that what could have been accomplished by a motion to amend could not be done by action which accomplished the same purposes, we would honor form without regard for the function which form serves. As for the future regularity of proceedings, we see no advantage to the General Counsel or the Board in bypassing the amendment procedure; a new hearing is still required if the party was not confronted with the added charge at the first hearing, so that time is not saved, nor the record shortened, nor argument abbreviated by the use of interpretation rather than amendment. Thus, because the Board had the power to amend the complaint in these circumstances and should be treated as having exercised it, the Board's remand was valid.

Both the Company and the Committee contend, however, that even if the remand was within the Board's power, the second hearing violated due process because they were restricted by the trial examiner to introducing evidence which had not been adduced at the first hearing, which ruling prevented their putting their case in the sequence and manner they deemed appropriate. In addition, they insist that the record demonstrates such bias and unfairness on the part of the trial examiner that the hearing was a travesty.

Concerning the ruling restricting the Company and the Committee to additional evidence, this was in accord with the mandate of the Board, reaffirmed by the Board over a motion for reconsideration. We see no prejudice on these facts. Of some 27 exhibits which were offered during the second hearing, almost all were admitted; the few which were rejected were either replaced by acceptable substitutes or were irrelevant. Testimony sought to be admitted and initially rejected was either eventually admitted or egregiously repetitive. The hearing turned out to be substantially *de novo*, the trial examiner sensibly concluding that wide latitude in admitting evidence would save more time than haggling over each proffer. We concede, as we did in *N.L.R.B.* v. *H. E. Fletcher Co.*, 298 F.2d 594, n. 5 (1st Cir. 1962), that there are situations in which piecemeal hearings may be significantly prejudicial because they prevent counsel from trying a case as he sees fit. Here, however, there has been no indication how counsel for the Company (or counsel for the Committee) would have proceeded differently, except to have been less cooperative in stipulating facts, which seems to us a matter of questionable tactics rather than of substance. Moreover, both the Company and the Committee knew what they had to confront in the second hearing: a constitution calling for management representation on a number of important committees com-

bined with a half century history of intimate relationship between the Company and the Committee. A defense would necessarily require proof of independent Committee action and arms-length dealing in fact, and this kind of evidence was fully introduced at the second hearing.[5]

The contention that the trial examiner's conduct precluded a fair hearing must also be rejected. Not only was there no formal objection during the hearing, in accordance with 29 C.F.R. § 102.41, but there was no substantial showing of such personal bias as would support such a charge. *Converse* v. *Udall*, 262 F. Supp. 583, 590 (D.Ore. 1966); *cf. N.L.R.B.* v. *Federal Dairy Co.*, 297 F.2d 487 (1st Cir. 1962); *Bituminous Material & Supply Co.* v. *N.L.R.B.*, 281 F.2d 365, 372 (8th Cir. 1960). The hearing, it is true, was an unseemly succession of *ad hominem* remarks by all except counsel for the Papermakers, whose participation was minimal. We have carefully scrutinized the record of the two-day hearing on remand and identified some 35 occasions of demeaning exchange among counsel and be-

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[5] The evidence duplicated in both hearings included the following: the employees could only vote for their representatives on the Committee, having no other voice, no meetings, and no dues; the Committee met on Company premises, was fully funded and supplied by the Company, posted its bulletin notices after Company approval; the Committee and the Company had equal membership on a Procedure Committee which received and channeled all reports of other committees and were equally represented on various standing committees, those eligible for voting and Committee office holding included members of other craft unions; records were kept in Company space without restriction to Committee access; amendments to the Constitution which altered the relationship between employees and Company had to be submitted to the Company.

The additional evidence in the second hearing included the following: the attempts of the Committee to seek changes in an incentive plan; the necessity of joint Company-Committee amendment to the Constitution to provide for mediation; the elimination of one department—and thus a Committee member—by the Company; the story of the 1961 negotiations of the Wages and Fringe Committee—tending to prove either Committee intransigence or subservience, depending on one's point of view; and a detailed description of the grievance machinery.

tween the trial examiner and counsel. In part this is perhaps endemic to a hearing before the same examiner who presided over the first hearing and ruled against the Company. While this is not a basis for requiring a new examiner, *N.L.R.B.* v. *Donnelly Garment Co.*, 330 U.S. 219, 236-237 (1947), it goes far to explain the atmosphere of tension and unmannerliness in the second hearing, which was completely absent from the first. The antagonism may also have stemmed from the appearance on the scene of counsel for the Committee,[6] whose unfamiliarity with the first hearing and applicable procedures exacerbated an already difficult situation.

It was an unhappy hearing—the record sheds luster on no one—but all the relevant evidence was admitted and, as far as we can tell from our careful reading of the record, fairly considered. Unfortunate antagonism does not necessarily become prejudicial bias, and we have found no evidence in the record that it did so here. Bearing in mind that we do not have advisory power over administrative agencies, *Donnelly Garment*, *supra* at 237, we conclude that due process was accorded the Company and the Committee during the second hearing.

That there was substantial evidence of domination by the Company is clear. *See* n. 5 *supra*. We deal with a labor organization whose General Body is closer to management than to its own constituents; whose constituents merely vote for representatives to the General Body, never meet with it, do not pay dues, have no opportunity to discuss issues before they are resolved, and do not ratify decisions after they are made. Assuming that the General Body at

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[6] The Committee had not been represented by counsel during the first hearing, apparently because its continued existence was not directly threatened in the absence of a "domination" allegation. However, its absence from the first hearing presents no fairness problem. *N.L.R.B.* v. *Greyhound Lines*, 303 U.S. 261, 271 (1938); *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 155 (1941).

times takes positions antithetical to management, these occasions have been rare and the entire process of Committee decision-making could be found to be unduly subject to management influence. What was sound thinking about labor-management relations when the Committee was founded in 1919 is not necessarily the legal minimum in 1969.

The petition for enforcement is granted.

APPENDIX B

United States Court of Appeals
For the First Circuit

No. 7304.

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,
v.
DENNISON MANUFACTURING COMPANY ET AL.,
RESPONDENTS.

Before ALDRICH, *Chief Judge*,
WOODBURY, *Senior Circuit Judge*, and
COFFIN, *Circuit Judge*.

MEMORANDUM and ORDER
Entered January 12, 1970

Per curiam. The petition for rehearing is denied. The fact that the Board "may" amend a complaint "upon motion," 29 C.F.R. § 102.17, does not mean that it cannot do so sua sponte under section 10(b) of the Act.

By the Court:
(s) Dana H. Gallup
Clerk.

APPENDIX C

3(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of a vacancy in the office of the General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

10(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing

such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U.S.C., title 28, secs. 723-B, 723-C).

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In the Supreme Court of the United States

OCTOBER TERM, 1969

DENNISON MANUFACTURING COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

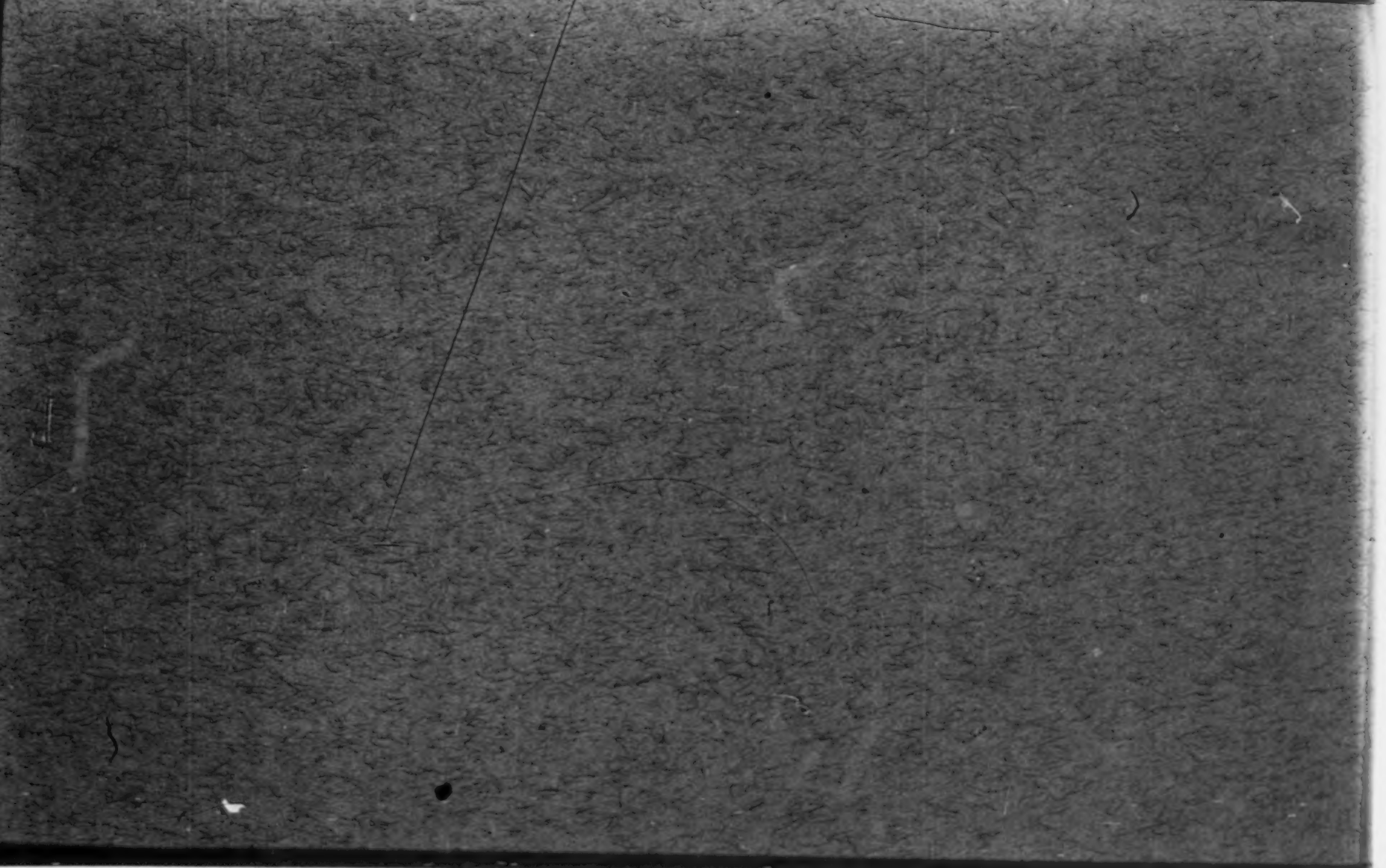
ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

BARUCH A. FELLNER,
Attorney,
National Labor Relations Board,
Washington, D.C. 20570.



In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1242

DENNISON MANUFACTURING COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 9-19) is not yet officially reported. The Board's decision and order (R. 1140-1160)[1] are reported at 168 NLRB No. 131.

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[1] "R." refers to the joint appendix to the briefs in the court below.

JURISDICTION

The judgment of the court of appeals was entered on December 10, 1969, and a petition for rehearing was denied on January 12, 1970 (Pet. App. 9, 20). The petition for a writ of certiorari was filed on February 20, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in the circumstances of this case, it was proper for the National Labor Relations Board to decide whether the employer had unlawfully dominated a labor organization representing its employees even though that issue had not been specifically alleged in the original complaint.

2. Whether substantial evidence supports the Board's finding that the employer had in fact dominated that labor organization, in violation of Section 8(a)(2) and (1) of the National Labor Relations Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the petition (Pet. App. 10, n. 1; 21-22).

STATEMENT

In 1919, the Company's employees established a labor organization ("the Committee") which was characterized by Henry S. Dennison, a former presi-

dent of the Company, as a "company union." [2] For the past 50 years, all Committee expenses have been wholly subsidized by the Company (R. 33, 92-93, 885-891, 923). The Committee's constitution provides that a restricted class of employees can vote for Committee representatives, and gives the employees no other voice in Committee affairs—there are no employee meetings, and they pay no dues (R. 45, 60, 78, 102-103, 910-913, 926, 1144). The constitution also establishes smaller committees, the most important of which is the procedure committee which receives and channels the reports of the other committees and determines the agenda of the periodic meeting of the representatives selected by the employees (R. 47-51, 916, 1145, n. 9). Through the Company's equal representation on the procedure group, the activities of the Committee are known to and controlled by the Company (R. 128). The constitution empowers the Company to veto any amendment which "alters the relationship" between management and the employees (R. 920). A grievance cannot proceed to arbitration unless the Company arbitrator agrees to the selection of a third arbitrator, and the Company agrees to defray the costs of arbitration (R. 1148, n. 14, 596, 918).

On February 26 and April 6, 1965, the United Papermakers and Paperworkers, AFL-CIO ("the

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[2] In opposing Section 8(2) of the Wagner Act (Section 8(a)(2) of the present Act), Dennison testified that his company union could not continue to exist if that provision were enacted. Hearings before the Committee on Education and Labor, United States Senate, 73d Congress, 2d Session on S. 2926, Part 2, pp. 400-404.

Union") filed petitions for Board elections among the employees who had theretofore been represented by the Committee (R. 811-812). The Union lost the ensuing election held on July 15 (R. 825). The Union then filed a charge alleging that the Company's connection with the Committee violated Section 8(a)(2) and (1) of the Act (R. 824). On September 8, a complaint issued alleging that the Company had rendered unlawful aid, assistance, and support to the Committee by recognizing it as the employees' exclusive bargaining representative and by contributing financial and "other support" (R. 846). In a separate count, the complaint further alleged that the Company "did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act" (R. 847).

On May 2, 1966, after a three-day hearing, the Trial Examiner issued his decision finding that the Company had assisted the Committee in violation of Section 8(a)(2) of the Act; but he refused to consider the issue whether the Company had dominated the Committee because the General Counsel had "failed to allege in his complaint that the conduct constituted domination" (R. 7). The Union filed exceptions with the Board to the Examiner's failure to find domination, and the General Counsel likewise raised this point in his brief to the Board (R. 1157). On November 1, 1966, the Board, concluding that the general Section 8(a)(2) count in the complaint was sufficient to encompass domination, remanded the case to the Examiner to afford the Company an opportunity to litigate that issue (R. 1158).

On February 13 and 14, 1967, a substantially *de novo* hearing was held before the Examiner. The Board, adopting the Examiner's supplemental decision, found that the Company had violated Section 8(a)(2) and (1) of the Act by dominating and contributing financial and other aid and assistance to the Committee (R. 1159).[3] The Board ordered the Company to cease and desist from the unfair labor practices found, and to disestablish the Committee as the collective bargaining representative of its employees. The Board also ordered the election set aside. (R. 1154-1155, 1159.)

The court of appeals, although disagreeing with the Board that the general Section 8(a)(2) count of the complaint encompassed an allegation of domination, nevertheless found that, as a result of the Board's remand and other circumstances, the Company was sufficiently apprised of, and had a full opportunity to litigate, the domination issue. The court further found that the Board's finding that the Company had dominated the Committee was supported by substantial evidence, and accordingly enforced the Board's order. (Pet. App. 9-19.)

ARGUMENT

The decision of the court of appeals turns on the facts of this particular case, and is correct.

---

[3] The Board further found that the Company also violated Section 8(a)(1) of the Act by distributing a letter to its employees shortly before the election exhorting them to vote against the Union and praising the Committee's accomplishments (R. 925).

1. The first question which petitioner seeks to raise—*i.e.*, whether the Board may *sua sponte* amend an unfair labor practice complaint—is not really presented here. For, even if the Board's action in remanding the case for a second hearing on the issue of domination be viewed as an amendment of the complaint to include that issue, the Board did not act *sua sponte* here, but in response to requests made by both the charging party (the Union) and the General Counsel. As the court below noted (Pet. App. 15):

> The issue of the scope of the complaint was a live one when the case was submitted to the Board, for the Papermakers had excepted to the trial examiner's failure to find domination and the General Counsel had sought through its brief to the Board a finding of domination. The Board did not, therefore, unearth an issue which the Company had no reason to know of in advance. * * *

Moreover, since petitioner had the opportunity at the second hearing fully to litigate the issue of domination, and, indeed, relitigate the issues of unlawful aid and assistance, it was not prejudiced by the Board's action in this case; therefore, even if there were a procedural irregularity, it does not warrant review by this Court. See *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333, 350-351; *National Labor Relations Board* v. *Thompson Transport Co.*, 73 LRRM 2387, 2388 (C.A. 10).

2. Petitioner's second contention (Pet. 7-8) is essentially an attack on the factual support for the Board's finding of unlawful domination, which was sustained by the court of appeals. Such an evidentiary issue does not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490-491. In any event, the court below correctly sustained the Board's finding of domination.

As shown in the Statement (*supra*, pp. 2-3), the Committee functions at the will of the Company. The Company has power to veto the decisions of the all-important procedure body. The employees are remote from their ostensible bargaining representative, since they have no general meetings, pay no dues, and receive no information concerning Committee activities or deliberations except for bulletins distributed by the procedure body. Moreover, even if the employees wished to amend the Committee's constitution to reduce employer control, such amendment requires the consent of the Company. Finally, arbitration may proceed only by the grace of management; the Company defrays the cost of arbitration and must agree to the choice of a third arbitrator. These factors amply show that the Company has dominated this employee representation plan, in violation of Section 8(a)(2) of the Act. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U.S. 261, 266; *National Labor Relations Board* v. *Southern Bell Telephone & Telegraph Co.*, 319 U.S. 50, 58; *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U.S. 241, 249.

Contrary to petitioner's contention (Pet. 7-8), *Modern Plastics Corp.* v. *National Labor Relations Board*, 379 F. 2d 201 (C.A. 6), is not in conflict but is factually distinguishable. In that case, the labor organization did not operate under a constitution and by-laws which vested ultimate authority in the employer. Moreover, there, unlike here, the union representatives met individually with employees, who also participated in periodic membership meetings. And in that case the union representatives sometimes met privately and formulated bargaining positions which were neither known to nor controlled by management.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

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Attorney,
National Labor Relations Board.

MARCH 1970.

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In the Supreme Court of the United States

OCTOBER TERM, 1969

No.

DENNISON MANUFACTURING COMPANY,
PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Case Nos. 1-CA-5080
1-RC-8287
1-RC-8350

DENNISON MANUFACTURING COMPANY

and

UNITED PAPERMAKERS AND PAPERWORKERS,
AFL-CIO

and

DENNISON EMPLOYEES COMMITTEE
PARTY TO THE CONTRACT
DENNISON MANUFACTURING COMPANY
EMPLOYER

and

UNITED PAPERMAKERS AND PAPERWORKERS,
AFL-CIO
PETITIONER

S. Anthony diCiero, Esq., of Boston, Mass., for the General Counsel.
Stoneman and Chandler by *Louis Chandler, Esq.*, and *John B. Street, Jr., Esq.*, of Boston, Mass. for the Respondent
Mr. Ambrose H. Fitch, of Framingham, Mass., for Dennison Employees Committee, Intervenor.
Warren Woods, Esq., of Washington, D.C., Counsel for the Charging Party.
Before: *David E. Davis*, Trial Examiner.

TRIAL EXAMINER'S DECISION

Statement of the Case

Upon a charge filed on July 19, 1965, a complaint was issued on September 8, 1965, in Case No. 1-CA-5080, alleging that Dennison Manufacturing Company, Respondent herein, had engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and 8(a)(2) of the National Labor Relations Act, as amended, herein called the Act. This case was consolidated with objections to elections in Cases numbered 1-RC-8287, and 1-RC-8350. Copies of the Order consolidating cases, complaint and notice of hearing were served upon the parties.[1]

Respondent filed an answer denying that it had engaged in the unfair labor practices alleged. A hearing was held before me, the duly designated Trial Examiner, in these consolidated cases at Boston, Massachusetts, February 1, 3 and 4, 1966. All parties were represented and were afforded a full opportunity to be heard, to participate in the hearing, to introduce relevant evidence bearing on the issues, to argue the issues orally on the record and to file briefs and proposed findings of fact and conclusions of law. Counsel for the General Counsel, herein called General Counsel, the Respondent, Dennison Employees Committee and the Charging Party submitted briefs which have been fully considered. Various motions have been made by the Respondent to dismiss the complaint and the objections

[1] Dennison Employees Committee was in all material respects treated as a party to this proceeding and is so regarded and found by the undersigned Trial Examiner. It was served with copies of the charge, complaint and notice of hearing. It was represented at the hearing by its president and was given full opportunity to participate.

to the elections.[2] These motions are disposed of in the following findings of fact and conclusions of law.

Upon the entire record in the case, and from my observation of the demeanor of the witnesses, I make the following:

Findings of Fact

I. The Business Of The Respondent

The complaint alleges and the Respondent admits, and I find that the Respondent, a Nevada corporation, at all times material to this proceeding maintained its principal office and place of business at 300 Howard Street in Framingham, Massachusetts and an office and place of business at Maynard, Massachusetts. At these locations the Respondent is engaged in the manufacture, sale and distribution of paper jewelry boxes, price marking tags and related paper products. In pursuance of its business, the Respondent annually receives quantities of paper, paper boxes and goods valued in excess of $50,000 from points located outside the Commonwealth of Massachusetts and annually ships products valued in excess of $50,000 from its locations at Framingham and Maynard to points located outside the Commonwealth of Massachusetts. It is found that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it would effectuate the policies of the Act to assert jurisdiction herein.

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[2] Counsel for Respondent moved by motion dated February 21, 1966, to correct the transcript in certain respects. I deny the motion for the reasons that I stated on the record of this hearing (p. 353 l. 19 — p. 354 l. 20, inc.).

II. The Labor Organizations Involved

United Papermakers and Paperworkers, AFL-CIO, herein called the Union, that the Respondent had dominated and interfered with the formation and administration of the Committee and had contributed financial and other support to it. The General Counsel's complaint issued by the Regional Director of the First Region, as amended at the hearing, alleges that Respondent was in violation of Section 8(a)(1) and 8(a)(2) of the Act in that it had rendered and was continuing to render unlawful aid, assistance and support to the Committee and that this conduct interfered with, restrained and coerced and is continuing to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed to them under Section 7 of the Act. The Respondent denied each of the allegations of the Complaint. And Dennison Employees Committee, herein called the Committee, are labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. *The Allegations of the Complaint*

The charge filed in behalf of the Union by its attorney alleged that the Respondent was in violation of Section 8(a)(1) and 8(a)(2) of the Act in

At the conclusion of the hearing, the undersigned Trial Examiner addressed himself to the parties and stated, ". . . if under all the circumstances here and all the testimony and exhibits even though domination is not alleged, I would like you, to have you discuss, if I should find domination here, my right to do so, and I want you to examine *Hughes Tool*, [3] the Board's decision, with respect to that

[3] The transcript reads "Udes Tool" and p. 365 l. 10, thereof, is hereby corrected by substituting "Hughes Tool" for "Udes Tool."

matter." Counsel for Respondent protested that he would want to prepare his case to meet such an allegation or at the very least that the complaint should be amended in order to afford him an opportunity to present evidence on domination. Counsel further stated that he objected to having to argue this point in his brief.

I also suggested that the parties discuss in their briefs the appropriate remedy in the event that a finding of assistance was made. I particularly requested discussion whether disestablishment[4] would be an appropriate remedy in this case.

It is apparent that the question I posed is clearly distinguishable from that in *Hughes' Tool*.[5] In the latter case the Board majority in agreement with the Trial Examiner held that the Board was not precluded from proper consideration as to whether the conduct of the Respondent therein violated Section 8(b)(2) and (3) of the Act "when facts have been alleged and fully litigated . . . merely because the General Counsel chose not to allege as a legal conclusion that the pleaded and litigated facts violate these sections of the Act." The instant case concerns a violation of Section 8(a)(2) which has been pleaded by the General Counsel, but the General Counsel failed to state in his complaint that the acts constituted "domination."

The distinguishing feature between the instant case and Hughes Tool is that the General Counsel, here, did plead that Respondent was in violation of 8(a)(2) but failed to allege in his complaint that the conduct constituted domination. However, the undersigned did assure counsel for the Respondent on at least two occasions[6] that he would

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[4] The transcript reads, "this establishment." Accordingly p. 366 l. 18 of the transcript is hereby corrected by substituting "disestablishment" for "this establishment."

[5] 147 NLRB 1573.

[6] See transcript pp. 70-72 inc., and p. 160.

make no findings which went beyond the allegations of the complaint. As the General Counsel did not object to these limitations and as the General Counsel has not moved to amend the complaint by alleging domination, I deem myself bound by the assurances made to counsel for the Respondent and therefore, I will abstain from finding domination by Respondent of the Committee, even though a strong argument has been made in the Union's brief that this issue was fully litigated and actually deals with the remedy rather than the merits of the complaint.[7]

B. *The Committee*

1. *The organization of the Committee and its constitution*

The only evidence introduced concerning the inception and organization of the Committee is contained in Joint Exhibit No. 7.[8] This exhibit is a letter on the stationery of the Respondent dated June 4, 1965, and addressed to "Dennison Families." Apparently it was sent by the Respondent as part of a preelection campaign against the Union. The sections pertinent to the subject matters presently under discussion read as follows:

. . . At a mass meeting held on July 2, 1919, the em-

[7] The word "domination" has achieved, pursuant to Board decisions and court approval, the stature of a word of art in that where domination of a labor organization is found disestablishment may be ordered as an appropriate remedy, while where interference and/or assistance is found, disestablishment of the labor organization would not be appropriate as a remedy. The *Carpenter Steel Company*, 76 NLRB 670; *Hershey Metal Products Company*, 76 NLRB 695.

[8] Ten Exhibits were marked and received as "Joint Exhibits" pursuant to as stipulation in which all parties agreed that they were admissible as evidence subject to the reservation that argument could be made with regard to the weight to be given any or all of these exhibits.

ployees decided to elect two employees from each department to draw up a constitution for the formation of a committee to represent the employees of the Company in negotiating agreements with management.

At another meeting of all employees on September 18, 1919, the constitution was approved. There have been changes in the constitution from time to time, but the purpose has always been as it was in the beginning — to present all employees with a means of settling all problems as they arise without having to pay hundreds of thousands of dollars for this privilege.

These 46 years have represented a long period of peaceful coexistence between management and non-management employees where the attitude of both has been to maintain a mutually beneficial period of labor peace rather than labor conflict. There have been differences of opinion as there would be within any company, but satisfactory solutions have been worked out by the bargaining group through regular committee and grievances procedures.

The record establishes the fact that the Committee has continued to exist and function from its inception in 1919 up to and including the present time. As mentioned in the foregoing excerpt from the Respondent's letter, the constitution of the Committee has been amended from time to time. The last revision and printing of the constitution, except for a revision in 1965, occurred in April 1959.[9] provisions of the Constitution of the Committee contained in Article IV, Section 1, 2 and 3, which are as follows:

Most pertinent to the issues in the proceeding are the provisions of the Constitution of the Committee contained in Article IV, Section 1, 2 and 3, which are as follows:

[9] The constitution is in evidence as Joint Exhibit No. 4.

Article IV.

Conference Committees

Section 1. Standing Conference Committees and Sub-Committees

In order to bring about the cooperative consideration and constructive development by the Employee Committee and the management, of the recommendations or suggestions of either body, the following Standing Conference of Sub-Committee shall be appointed:

Conference Committees:

1. Procedure and Publicity.
2. Personnel — (Hours, Wages and Promotions, Unemployment, and Classifications)
3. Older Service.
4. Returning Veterans.
5. Vacation.
6. Separation.
7. Prevention of Stealing.
8. Health & Accident.
9. Clerical Review.
10. Service — (Building and Facilities, Health and Safety and Service.)
11. Bond.
12. Unemployment Leaves.
13. Mechanical Classification.
14. Rules Governing Out-Time for 15-Year Employees

Sub-Committees:

1. By-Laws.
2. Tellers.
3. Labor Legislation.

4. Refreshment.
5. Fire Engineers.
6. Suggestions.
7. Bloodmobile.

These committees shall hold office until December 31 of the year for which they were appointed or until the appointment of their successors. Conference Committees shall consist of from two to six members, one-half of whom shall be designated by the management, and one-half by the Employee Committee. The Chairman of the Employee Committee and the Chairman of the Central Committee shall make appointments on behalf of the Employee Committee.

SECTION 2. COMMITTEE ON PROCEDURE — SPECIAL CONFERENCE COMMITTEES.

The Committee on Procedure shall consist of the Chairman of the Employee Committee, the Vice Chairman of the Employee Committee, and of two members designated by the management. Whenever the management or the Employee Committee has prepared a recommendation for the consideration or action of the other, the recommendation shall first be sent to the Committee on Procedure. In regard to all recommendations which are brought to it, except those which relate directly to the revision of the constitution and By-Laws, or to other matters of procedure, the Committee on Procedure shall take no direct action, but shall determine whether the recommendation is of sufficient importance to be referred to a Conference Committee. If so, it shall forward the recommendation directly to the appropriate Standing Conference Committee, if any. If the recommendation does not come within the scope of any Standing Conference Committee, the Committee on

Procedure shall create a special committee to deal with the question. Each such committee shall consist of from two to six members, one-half appointed by the representatives of the management, and one-half by the representatives of the Employee Committee on the Committee on Procedure; but in no case shall announcement be made of these appointments until the appointments have been brought up for discussion of the full Committee on Procedure. If the Committee on Procedure decides that it is unnecessary to refer a recommendation to a Conference Committee, it shall forward the recommendation without amendment directly to the Employee Committee or to the management, as the case requires.

By vote of the General Body a special committee can be appointed to handle a problem regardless of the powers of any standing conference committee.

SECTION 3. DUTIES OF CONFERENCE COMMITTEES.

Every Conference Committee, whether standing or special, shall discuss, investigate and as its discretion, shall revise or add to all recommendations submitted to it, and through the Committee on Procedure shall report its action and conclusions or any new recommendations, to the person designated by management for the consideration of management, and to the Secretary of the Employee Committee for the consideration of the Employee Committee; but no action or conclusion of any Conference Committee, except the action of the Committee on Procedure in creating special Conference Committees and Classification Committees on Classifications, shall be binding unless and until it is expressly authorized or ratified both by the Management and by the Employee Committee.

Before arriving at a decision on a Classification, one employee and/or his Representative and the Division Man-

ager or the Department Head will be given the opportunity to appear, if they so desire, before the Personnel Committee, Clerical Review Committee, or Mechanical Classification Committee.

All majority reports of the above Committees on Classifications will be final. If one of the Committes is unable to reach a majority decision on a Classification, any subsequent decision made by management in regard thereto is subject to the grievance procedure.

Any Classification is subject to revlew by the appropriate Classification Committee, upon request, after one year from the date of the original decision or date of the last previous reconsideration decision.

2. *Additional findings concerning Committee*

From my study of the constitution and the record of the evidence adduced at the hearing, I make the following concerning the Committee:

(a) The Committee regularly meets on company premises on the first Monday of each month, it is known also as the General Body and consists at the present time of 44 representatives who are known also as Department Representatives. The Committee has no dues and no income. It is financed by the Respondent and the representatives suffer no loss of wages and are reimbursed expenses by the Respondent for time spent on the Committee business.[10]

(b) The rank-and-file employees, who number approximately 2000 employees, never meet as a group, do not pay dues, have no membership in the Committee and do not

[10] The monthly cost of such fiinancing is reflected in General Counsel's Exhibit No. 11(a) through 11(g) which indicate that the expenses for the Committee for January 1965 were $3969, February $4692, March $5305, April $5300, May $4583, June $5143 and July $4135.

participate in the activities of the Committee, except those employees who meet the following eligibility requirements have a right to vote for a Departmental Representative:

(1) 18 years of age
(2) 1000 hours of employment by company
(3) are working on the day of election

Employees eligible to be elected as Department Representative and thus be a member of the Committee or General Body must meet the following eligibility requirements:

(1) 21 years of age
(2) employed one year by company
(3) be citizens of the United States

(c) The Respondent's personnel clerk prepares the eligibility list of voters and those eligible for election as Departmental Representative.

(d) The Respondent maintains a bulletin board and rank-and-file employees and supervisors are notified of the Committee's actions by a notice posted on the bulletin board. All notices posted by the Committee must have prior approval of management.

(e) The Respondent has a bargaining relationship with other labor organizations each of which maintains a bulletin board on the company premises and on which they can post notices to members without prior approval of management.[11]

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[11] These labor organizations and the approximate number of employees in their respective units are as follows: Boston Photo-Engravers' Union #3—13, Boston Electrotypers Union #11—13, Boston Typographers Union #13—16, Local #16, International Brotherhood of Bookbinders—7, International Printing Pressmen and Assistants Union of North America—18, International Association of Machinists and Nobscot Lodge #1973, District 38—130. Printing Specialties Pressmen's Union and its Local #528—18, and Lithographers and Photo-Engravers' International Union Boston 3-P-ALF-CIO—7.

(f) Members of the other unions are eligible to vote for Department Representatives or to hold any of the offices of the Committee provided they meet the Committee's eligibility requirements. However, the Committee does not bargain or process grievances concerning the employees in the various units represented by other unions.

(g) The company customarily compensates employees who are members of other unions for time lost on union business dealing with the company.

(h) During 1965, the president of the Committee was a member of the I.T.U. and in the unit represented by the I.T.U. He has been president for 3 years. Seven other Departmental Representatives are likewise members of other unions and are employed in units represented by their respective unions.[12]

(i) During the elections which are involved in these proceedings some Departmental Representatives acted as observers for the Employer and were paid for the time spent while acting as observers. Departmental Representatives who were observers for the Union were not compensated by the Company.

(j) The Committee was not on the ballot in the election because it had decided at a special meeting called by its president not to intervene in the Board representation proceedings and not to appear on the ballot as it was their opinion that a vote against the Union would be equivalent to a vote for the Committee.

(k) There are no formal agreements between the Respondent and the Committee but announcements by the Committee after assent by the Respondent constitute an agreement between the Respondent and the Committee in behalf of the employees unrepresented by other unions.

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[12] See Joint Exhibit No. 3.

Thereafter employees are informed by notices posted on the bulletin board.

(l) The Committee consists of Departmental Representatives in four plants of the company. Framingham, Maynard, Hudson and Marlboro, only two of the plants, that in Framingham and Maynard, are involved in these proceedings.

C. *Unlawful Aid, Assistance and Support*

The principal witnesses in this proceeding were the president of the Committee, Ambrose H. Fitch,[13] and H. L. Allen, Respondent's personnel manager.

Additionally, findings herein are based on the documentary exhibits which were in the possession of the Committee and/or the Respondent. These documents were produced promptly upon the request of the General Counsel, Respondent's Counsel, or the undersigned. Moreover, Counsel for Respondent, the Committee representative, and the General Counsel greatly expedited the hearing by fully cooperating in gathering and marking the documents in an orderly fashion.

I find that the Committee could not exist but for the unlawful aid, assistance and support rendered by the Respondent. To recite all the indicia of illegal aid, assistance and support, would unnecessarily encumber this decision. It would seem, therefore, sufficient to enumerate some of the more vital elements of the illegal course of conduct engaged in by the Respondent.

Initially, it is clear that under the provisions of the constitution of the Committee, management has an equal voice on the decisions of the key committees of the Committee and thus can veto any meaningful action of the Committee.

[13] Fitch is a member of the I.T.U. and is employed in a unit represented by the I.T.U. rather than the Committee.

Significant in this regard is Respondent's Exhibit No. 6 which bears the heading, "Dennison Employees Committee." The procedure committee is the first standing conference committee listed and consists of R. L. Allen; D. F. Prince; A. Fitch, and C. Merlini. This committee, under the constitution of the Committee and as testified to by Fitch and Allen functions as the conduit for all other committees and the General Body.

I conclude that the procedure committee is in actuality the overseer of the entire structural organization of the Committee. It allocates any action of the General Body to a subordinate committee, approves the agenda of the General Body and approves completed actions for posting on the bulletin board subject to the approval of management. The R. L. Allen on this Committee is the personnel manager for all four of Respondent's plants, and is in charge of employment, employee fringe benefit programs and handles negotiations with labor organizations for the Respondent. D. F. Prince, another member of the procedure committee is the general manager of the therrimage department. A. Fitch, a member of the I.T.U., is the president of the Committee and C. Merlini is a press operator. All other standing conference committees in accordance with the constitution of the Committee have management representatives equal in numbers to department representatives. It was stipulated at the hearing that all management representatives who are on committees of the Commitees are supervisors within the meaning of the Act. The above description of the committees establishes the fact that no decisions, especially in any of the conference committees, can be made without management approval because the conference committees are equally divided between management and departmental representatives.

The Committee does not now, and as far as this record is concerned, it has never provided for membership of em-

ployees or participation by them in Committee activities, excepting the right to vote or to be elected as a representative in accordance with the elibility rules. The record establishes that there are no provisions in the Committee's constitution for a general meeting of employees nor has there one been held since the formation of the Committee in 1919. As noted above results of meetings with management and Committee action are posted on the bulletin board for employees information after approval by management.

Through the Committee's 47 years of existence there has been no comprehensive trade agreement covering wages, hours and working conditions, employees have had no opportunity to accept or reject any agreements reached by the Committee or the form of representation that the Committee affords.[14] The Committee even refused to participate by appearing on the ballot in the election ordered by the Regional Director on the representation petitions involved herein.

The foregoing recital establishes that the Respondent's voice and participation in the affairs of the Committee severely circumscribed and limited the Committee's freedom to function as a labor organization.[15] Accordingly, I find that the above constitutes unlawful interference with the administration of the Committee in violation of Section 8(a)(2) of the Act.

The record establishes that the financial contribution to the Committee by the Respondent averages in excess of

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[14] Matters outside the 10(b) period have been considered by the undersigned as background in evaluating the character of the Committee and Respondent's conduct within the 10(b) period.

[15] Indicative of these limitations is "Article VIII—Amendments." This article provides that no amendment to the constitution of the Committee shall be operative until referred to management if it alters the relationships established under the Employee Committee Plan, i.e., the Committee.

$4,000 per month. The Committee has no funds, has no source of income and looks to the Respondent as its sole source of finance. I find that this substantial financial contribution by the Respondent constitutes illegal aid, assistance and support of the Committee in violation of Section 8(a)(2).

As the Committee could not function without the use of the Respondent's premises for meetings, for conduct of its elections and is wholy dependent upon the Respondent for supplies, stationery, secretarial services and lists of eligibility for voting and for election to office, I find that this assistance which is furnished by the Respondent likewise constitutes unlawful aid, assistance and support within the meaning of Section 8(a)(2) of the Act.

D. *Interference, Restraint and Coercion of Employees*

The aid and assistance furnished by the Respondent, and Respondent's interference with the administration of the Committee, during the 6 months preceding the filing of the charge, as described above, clearly inhibited employees in the free selection of a collective-bargaining representative and constitutes inferference, restraint and coercion of employees in violation of the rights guaranteed to them in Section 7, of the Act, thereby violating Section 8(a)(1) of the Act. I so find.

The record establishes that even while the representation petitions were pending, through the election campaign and continuing to the present time, the Respondent has recognized the Committee and continued to participate in the administration and functioning of the Committee through its supervisors who are management representatives on the various conference and other committees; and that Respondent continued and is continuing its aid, assistance and support.

Shortly before the election, on June 4, 1965, Respondent, on its letter head, addressed a letter to "Dennison Families."[16] This letter exhorted a vote against the Union and praised the Committee's record of accomplishment. It concluded with the hope that the employees would vote not to change the present relationship. Inasmuch as I have found above that the Committee was unlawfully aided, assisted and supported by the Respondent and that Respondent interfered with the administration of the Committee, the expression of preference contained in this letter constitutes an independent violation of Section 8(a)(1) in that it interfered, restrained and coerced employees in their rights under Section 7 of the Act. I so find. It is also found that this constituted unlawful assistance within the meaning of Section 8(a)(2).[17]

E. *The Objections to the Election*

Case Nos. 1-RC-8287 and 8350 are involved in the objections to the election. The Union filed a petition on February 26, 1965 in Case No. 1-RC-8287 seeking to represent certain employees at the Framingham, Massachusetts plant. The Regional Director issued his Decision and Direction on May 10, 1965. The petition in Case No. 1-RC-8350 was filed by the Union on April 6, 1965 and it covered certain employees in the Maynard, Massachusetts plant. The Decision and Direction was also issued by the Regional Director in the latter case on May 18, 1965. Both elections were held on June 15, 1965 and resulted in rejection of the Union at both plants, 775 against and 443 for the Union in the Framingham plant. The vote in the Maynard plant was 170 against and 59 for the Union. The Committee did not

[16] Joint Exhibit No. 8

[17] *Atco-Surgical Supports, Inc.*, 157 NLRB No. 53.

appear on the ballot as it had decided at a special meeting held on March 15, 1965 not to intervene in the representation proceedings.

Objections to the election were filed by the Union on June 21, 1965.[18]

I have found above that the Respondent violated Section 8(a)(2) by conduct which constituted unlawful interference with the administration of the Committee and that Respondent further violated Section 8(a)(2) by conduct which constituted illegal aid, assistance and support of the Union. I have found also that Respondent has engaged in certain conduct in violation of 8(a)(1). As the acts, upon which I have predicated my findings above, continued during the crucial time period which commences with the filing of the petition to the time of the election,[19] I find that his conduct interfered with the employees' right to a free and untrammeled choice in the elections. Accordingly, I shall order that the elections held on June 15, 1965, in Case No. 1-RC-8287 and 1-RC-8350, be set aside and a new election conducted at an appropriate time to be determined by the Regional Director of the First Region.

F. *Contention of the Parties and Concluding Findings*

Respondent's brief concedes inferentially that the Com-

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[18] The Employer, Respondent herein, filed a motion with the Regional Director on July 1, 1965 requesting dismissal of the Objections on procedural grounds. The Acting Regional Director denied the motion and stated his reasons therefor in his Supplemental Decisions. (G.C. Exhibits No. 1(i) and (h)). As the Board has denied the Employer's appeal from the Acting Regional Director's Supplemental Decision, I am bound by the ruling and find that the Objections are properly before me. Moreover, the Respondent is not prejudiced thereby as I make no findings based on the documents that are the subject matter of the motion.

[19] In *Ideal Electric Co.*, 134 NLRB 1275, the Board established the principle that conduct in the period between the filing of the petition and the election which tends to prevent a free election may be grounds for setting the election aside.

mittee's freedom to function is limited an circumscribed when it states "As a practical matter, all action of the procedure committee require the approval of both the Employee's Committee and the Respondent." Inasmuch as the procedure committee is provided for in the constitution of the Committee, the functioning of such a key committee is certainly limited and subjected to the Respondent's will and veto when "all actions of the procedure committee" require the approval of the Respondent. A bona fide labor organization cannot function in its day to day operations subject to an employer's approval or veto. Neither can there be true arms length dealing between a labor organization and management when all matters that could concern the internal affairs of the labor organization are subjected to approval or veto by management in the initial stage by the equal representation on the procedure committee and the power of this committee to fashion the agenda of the Committee.

The argument made by Respondent in its brief that the employees could have elected representatives to effect changes in the structure or approach of the committee lacks substance and ignores the actual facts. The constitution of the Committee provides that no changes therein may be made without management approval, hence a rank-and-file movement to change the structure or approach would be doomed to failure from its inception *unless management approved.* Moreover, when in 1965, a dissident group of employees did attempt to secure help from another union, the Union herein, the very existence of the Committee and its entire operating structure constituted a barrier to a free and untrammeled choice by the employees. The continued functioning of the Committee during the 10(b) period and while the Petition for election was pending aided and abetted by the continued illegal aid, assistance and support, acted as a strong deterent and coercive force

against a free expression of the employee's choice of a bargaining representative. I so find. Under these circumstances the Respondent's contention that the Committee has majority support cannot be seriously advanced. At any rate, I believe such an argument cannot be seriously considered and is devoid of merit, for if any majority status be attributed to the Committee as a result of the election, the phrase "coerced majority" is more descriptive of the Committee's representative status. In view of my findings herein, I conclude contrary to Respondent's contention that the committee did not represent an uncoerced majority of the employees at any time material herein.

Respondent, in its brief, urges as a basic defense to the aid, assistance and support afforded the Committee that the limited use of the Respondent's time and property was on the same basis permitted all other unions and that it was no violation to do so. This argument begs the issue and seems to be a plea in avoidance rather than a defense. Initially, I must note, that illegal assistance and support rendered to other unions is no defense to an allegation that the Respondent violated the Act by its course of conduct with respect to the Committee. By this I do not intend to imply that the Respondent acted wrongfully in providing some aid and assistance to the eight other unions with which it has a bargaining relationship. Not only is the Respondent's conduct *vis a vis* other unions not before me, but on the available evidence I see nothing illegitimate in the relationship. The differences in the structure of the Committee when contrasted with the other unions, the constitution of the Committee, the control of the Respondent over the Committee's operations and day to day functions, the lack of membership, the total financial dependence of the Committee, and the substantial financial assistance to the Committee, all add up to massive aid, assistance and support far beyond the point of tolerance, or that which

can be called cooperative assistance designed to foster a good relationship. Moreover, it seems rather obvious that, as the Respondent's relationship with the Committee anteceded, by many years, its relationship with the other unions, the Respondent was under great compulsion to extend to the other unions the indulgences afforded them. Accordingly, I reject the Respondent's defense based on its treatment of the other unions.

The Respondent seeks to equate agreements reached with the other unions with the relationship and operation of the Committee. This argument is bottomed on a fallacious premise. A comparison is attempted by alluding to the fact that the various craft unions have negotiated with the employer provisions for various standing committees consisting of both representatives of management and the particular union. This comparison ignores the fundamental distinction that pervades Respondent's relationship with the Committee. The standing committees, the machinery for operation of the Committee, are not the product of collective bargaining; but are provided for in the constitution of the Committee. Thus management by various constitutional provisions is part and parcel of the Committee and thereby has control, veto power and the right to approve every significant action of the Committee and also has a constitutional right to participate on an equal basis in the Committee's basic decisions and functions. This sort of arrangement is a far cry from cooperative joint committees which may be established through negotiations. The mere existence of these constitutional provisions under which the Committee operates is the very antithesis of a truly independent labor organization capable of negotiating at arms length with management.[20]

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[20] Cf. *Western Reserve Telephone*, 138 NLRB 755, enforced 323 F. 2nd 564, (C.A. 6) where the court said, "... Most of the meetings of the committee were held on company time at a conference

Wean Mfg. Co., 147 NLRB 112, and other cases like *Coamo Knitting Mills, Inc.*, 150 NLRB No. 35, cited by the Respondent in its brief, support the foregoing conclusions of the undersigned rather than the propositions advanced by the Respondent. *Hershey Metal Products Company*, 76 NLRB 695, also cited by the Respondent, is easily distinguished because of the *de minimis* participation of management in the affairs of the labor organization therein involved.

For the reasons stated at the outset of this decision, I adhere to my conclusion that the circumstances of this case require that I omit a specific finding of domination. Accordingly, I deny the request of the Union's attorney, as expressed in his brief, that I so find.[21]

IV. The Effect of the Unfair Labor Practices Upon Commerce

The conduct of Respondent set forth in section III, above, which occurred in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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room in respondent's central office. Minutes were kept by the secretary to respondent's vice president. *The by-laws of the committee gave powers to the company president which are not consistent with the free and independent bargaining envisioned by the National Labor Relations Act.*" [Emphasis supplied].

[21] The denial of this request is not to be taken as a disagreement with his argument that the situation here resembles *Carpenter Steel Company*, 76 NLRB 670, and that similar employee representation plans were disestablished by the Board with the approval of the Supreme Court in *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, and *Southern Bell Telephone*, 319 U.S. 50.

V. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action in order to effectuate the policies of the Act.

Having found that Respondent has violated Section 8(a)(1) and (2) by contributing financial and other support to the Committee, I shall recommend it cease and desist from so contributing, that it withdraw and withhold recognition from the Committee as representative of its employees unless and until that organization shall have been certified by the board as the exclusive representative of Respondent's employees, and that it cease giving effect to any agreements oral or written with the Committee executed or renewed during the 6 months immediately preceding the filing of the instant charge.[22]

I shall further recommend in the representation proceedings, the Board vacate and set aside the elections of June 15, 1965, and direct new elections at a time found appropriate by the Regional Director of the First Region of the National Labor Relations Board.

As the unfair labor practices committed by the Respondent are of a character striking at the roots of employees' rights safeguarded by the Act, it will also be recommended that Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the foregoing factual findings and conclusions, I come to the following:

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[22] Nothing in this recommendation shall be construed to require Respondent to vary wages, hours, seniority or other substantive features of its employees' working conditions which may have been established pursuant to any prior agreements or understandings.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union and the Committee are labor organizations within the meaning of Section 2(5) of the Act.

3. By contributing financial and other support to the Committee during the 6-month period prior to the filing of the charge, Respondent has interfered with the administration of a labor organization in violation of Section 8(a)(1) and (2) of the Act.

4. By continuing to deal with the Committee and continuing to contribute financial and other support to it during the period after the filing of the representation petitions to the date of the elections, Respondent illegally and substantially affected the results of the Board-conducted elections of June 15, 1965.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Recommended Order

On the basis of the foregoing findings of fact and conclusions of law, and the entire record in the case, I recommend that Respondent, Dennison Manufacturing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Contributing financial or other support to the Committee or any successor thereto.

(b) Recognizing the Committee, or any successor thereto, as the representative of its employees for the purpose of bargaining collectively concerning conditions of employment, unless and until said labor organization shall have been certified by the Board as the exclusive representative of such employees in an appropriate unit.

(c) Enforcing or maintaining any agreement oral or written, with the Committee entered into or renewed within the 6-month period preceding the filing of the charge to the present time, or any modifications, extensions, supplements, or renewals thereof, unless and until said labor organization shall have been certified by the Board as the exclusive representative of such employees in an appropriate unit; *Provided*, that nothing herein shall be construed as requiring Respondent to vary wages, hours, seniority, or other substantive features of its employees' working conditions which may have been established.

(d) In any manner interfering with, restraining or coercing its employees in their right to self-organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which I find will effectuate the purposes of the Act:

(a) Withdraw and withhold recognition from the Committee, or any successor thereto, as the exclusive bargaining representative of its employees, unless and until said labor organization shall have been certified by the Board as the exclusive representative of such employees in an appropriate unit.

(b) Post at its plants in Framingham, Maynard, Hudson and Marlboro, all of which are in Massachusetts, copies of the attached notice marked "Appendix."[23] Copies

[23] If this Recommended Order is adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. If

of such notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by an authorized representative of Respondent, be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are cutomarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director of the First Region, in writing, within 20 days from the receipt of this Decision, what steps the Respondent has taken to comply herewith.[24]

Dated at Washington, D. C. May 2, 1966.

(s) DAVID E. DAVIS
DAVID E. DAVIS
Trial Examiner

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the Board's Order is enforced by the United States Court of Appeals, the notice will be further amended by the substitution of the words "A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER" for the words "A DECISION AND ORDER."

[24] If this Recommended Order is adopted by the Board this provision shall be modified to read: "Notify the Regional Director of the First Region, in writing, within 10 days from the date of this Order what steps the Respondent has taken to comply herewith.

APPENDIX A

TXD-256-66

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDED ORDER OF A TRIAL EXAMINER OF THE
NATIONAL LABOR RELATIONS BOARD
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NATIONAL LABOR RELATIONS ACT
(AS AMENDED)

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT interfere with the administration of DENNISON EMPLOYEES COMMITTEE or aid, assist or contribute financial or other support to DENNISON EMPLOYEES COMMITTEE or any successor thereto.

WE WILL NOT recognize DENNISON EMPLOYEES COMMITTEE, or any successor, as representative of our employees unless and until that labor organization has been certified by the Board as the exclusive representative of our employees in an appropriate unit.

WE WILL NOT enforce or maintain any agreement oral or written, entered into with DENNISON EMPLOYEES COMMITTEE since January 20, 1965 or any modification, extension, supplement, or renewal thereof, unless and until that labor organization had been certified by the board as the exclusive representative of our employees in an appropriate unit.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their rights to organize; to form, join, or assist a labor organization; to bargain collectively through a bargaining agent chosen by themselves; to engage in other con-

certed activities for the purpose of collective bargaining or other mutual aid or protection; or to refrain from any such activities (except to the extent that the right to refrain is limited by the lawful enforcement of a lawful union-security requirement).

WE WILL NOT withdraw and withhold recognition from DENNISON EMPLOYEES COMMITTEE, or any successor thereto, as the representative of our employees unless and until that labor organization has been certified by the Board as the exclusive representative of our employees in an appropriate unit.

DENNISON MANUFACTURING COMPANY
(Employer)

Dated ..... by .....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Boston Five Cents Savings Bank Building, 24 School Street, Boston, Massachusetts 02108 (Tel. No. 223-3358).

TRIAL EXAMINER'S SUPPLEMENTAL DECISION

The Remand

On May 2, 1966, the undersigned Trial Examiner issued his original Decision in the above entitled consolidated proceeding following hearings on February 1, 3, and 4, 1966.

That Decision found that Respondent interfered with the administration of Dennison Employees Committee by contributing financial and other support to it during the 6-month period prior to the filing of the charge. A finding was also made that by continuing to deal with the Committee and by continuing its financial and other support to the Committee during the period after the filing of the representation petitions to the date of the elections, Respondent substantially affected the results of the Board conducted elections of June 15, 1965. Accordingly, the aforesaid elections were ordered set aside.

The undersigned further concluded in the Decision that he was bound by the assurances made to counsel for Respondent during the course of the hearing that no findings would go beyond the specific allegations of the complaint. The undersigned, therefore, abstained from considering whether Respondent dominated the Committee.

On November 1, 1966, the Board issued an "Order Remanding Case For Further Hearing," herein called Remand Order. The Board in its Remand Order expressed the opinion that the allegation of a violation of Section 8(a)(2) in the complaint was sufficient to include an allegation of employer domination. The Remand Order stated,

> "... as the Respondent in the circumstances disclosed by the record was consequently unprepared to meet the issue, [of domination] the Board is of the further opinion that in the interest of a fair hearing, the case should be remanded to the Trial Examiner for the purpose of conducting further hearings on the issue of employer domination, affording the Respondent the opportunity of raising any defenses it may have in such connection, and enabling the parties to adduce additional evidence and present legal argument thereon."

Pursuant to the Remand Order, the undersigned Trial Examiner conducted a further hearing on February 13 and 14, 1967 at Boston, Massachusetts.

Upon the entire record in these proceedings including the record made at the hearing held on remand, and after careful consideration of the additional legal memoranda submitted by the parties, I make the following findings of fact, conclusions of law, and recommendations on the issue whether or not Respondent dominated the Committee in violation of Section 8(a)(2) of the Act:

Findings and Conclusions

I. Disposition of Motions

At the outset of the remanded hearing counsel for Respondent made a series of motions in which he was joined by counsel for the Committee, as follows:

1. That the Trial Examiner give the Respondent the right to litigate just this issue (domination) through a final Court of competent jurisdiction before getting into the merits of the remanded issue, and to postpone any hearing on the merits until such Court has issued a ruling.

The motion was denied. The statutory provisions of the Act in Section 10(e) and (f) establish the method of obtaining review of the Board's decisions. Clearly the Trial Examiner has no power or authority to stay the Board's processes thereby ignoring the Board's remand and bypassing the statutory provisions.

2. That a stipulation be entered into that Respondent, by going forward on the merits, has waived no legal rights to contest the legality of the Remand Order with the Board and in the Courts if necessary. Although this was couched in terms of a request for a stipulation, the General Counsel and counsel for the Charging Party having

refused to enter into it, the Trial Examiner believes some discussion under the above heading is necessary. The Trial Examiner, at the hearing, stated; "I think whatever I say, I think you still have the right to go to the Courts on it, so I don't think it is even necessary for me, I'll express my opinion, I'll say you do have the right."

It is apparent that the request of Counsel for Respondent is rather vague. The Trial Examiner's response constituted and was intended as a restatement of Counsel's rights under Section 10(e) and (f) of the Act to litigate the question at the proper time. As such, I believe my statement, opinion, or ruling is correct. In this connection, it was brought to light that Respondent had filed a motion with the Board, on November 14, 1966, requesting reconsideration and reversal of the Board's Order of Remand. This motion was denied by the Board on November 17, 1966. The Trial Examiner also stated that he was bound by the Board's ruling and that he would receive evidence and legal memoranda on the issue of domination in accordance with the Board's remand.

3. That the Trial Examiner strike the Remand Order because the Board unnecessarily and unlawfully delayed the conclusion of proceedings in violation of Section 6(a) of the Administrative Procedure Act. This Motion was denied. There is no undue delay in the processing of this case that is chargeable to the Board. The Board's Remand Order comports with established custom, practice, and procedure.

4. That the Trial Examiner strike the Remand Order and transmit the case to the Board for a finding totally on the basis of the allegation in the complaint relating to the alleged unlawful assistance since the Respondent is being compelled by the Board to try this case in a manner different than it would have tried the case if domi-

nation had been specifically alleged in the complaint or in the specification.

This Motion was denied. Counsel for Respondent misconceives the powers and duties of a Trial Examiner. The lack of specificity as to the different manner in which counsel would have tried the case is quite puzzling inasmuch as the Remand Order affords all parties an opportunity to adduce additional evidence on the issue of domination.

5. Respondent renewed a Motion made at the earlier hearing that the Objections to the election filed by the Charging Party be dismissed for lack of proper service on Respondent.

This Motion was again denied for the reasons stated in my original Decision.

6. That the matter of domination be dismissed because the Board's Remand Order was issued more than 6 months after the completion of that period. This motion was denied. The Trial Examiner ruled that the same 10(b) period that was applicable in the earlier hearing prevailed in the hearing on remand, i.e., that period 6 months prior to the filing of the charge.

7. That none of the evidence presented at the earlier hearing be considered on the issue of domination as this was the first date that the Board had set for a hearing on domination.

This Motion was denied. The Board Order of Remand permitted *additional* evidence on the question of domination. Clearly it would be contrary to the intent of the Board's Remand Order to rule otherwise. Moreover, trying the case *de novo* on the issue of domination would be sheer duplication and time consuming.

8. That all evidence of domination in the earlier hearing be stricken. This motion was denied. The reasons stated above are equally appropriate to this Motion.

Counsel for the Committee moved to dismiss as to domination because the General Counsel had not amended the Complaint to allege domination.

This Motion was denied. In keeping with the Board's Remand Order, an amendment by General Counsel was unnecessary. The Board's Remand Order requires consideration of the issue of domination even though the General Counsel has not formally moved to specifically amend.[1]

The General Counsel, after introducing the formal documents,[2] stated that he reoffered all the evidence, all of the testimony and all of the formal exhibits that were submitted in the earlier hearing and thereupon rested. Counsel for the Charging Party adopted the General Counsel's position. The Trial Examiner stated that all the evidence in the earlier hearing would be considered on the issue of domination in this Supplemental Decision.

As stated above, the Trial Examiner, in arriving at his decision herein, has considered all the evidence in both hearings together with all the briefs.

II. The Evidence on the Issue of Domination

A. *Prefatory Statement*

Long experience has shown that an individual's bargaining power is greatly inferior to that of an employer. Chief Justice Taft, in American Steel Foundries v. Tri-City Central Trades Council,[3] stated the situation when

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[1] Cf. *Frito Co.* v. *N.L.R.B.*, 330 F. 2d 458 (C.A. 9), where the Court said: "Once having elected to prosecute a complaint before the Board, the General Counsel is cast in the role of prosecutor in a judicial proceeding. His authority as a prosecutor is not reviewable by the Board, but this authority does not extend to control of the proceeding itself. He cannot limit the scope of the decision which may be rendered upon the evidence adduced."

[2] General Counsel's exhibits 1AA-1FF.

[3] 257 U.S. 184, 209.

he said, ". . . A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. . . ."

Recognition of the foregoing conditions gave rise to labor organizations and to the demand for injection of the democratic doctrine of collective bargaining into industry.

When Congress enacted the National Labor Relations Act, it demonstrated in its preliminary findings a distinct awareness that a major cause of industrial strife was the denial by some employers of the right of employees to organize. The Act, therefore, was initially addressed to the reduction of industrial strife by granting employees the right to freely organize in unions of their own choosing. Secondly the Act requires employees to bargain collectively with the representatives so chosen. It is clear that the fundamental concepts of the Act, therefore, are designed to protect the right of employees to organize and bargain collectively. A company-dominated union is a negation of that right as it places the employer on both sides of the bargaining table and is a denial of the collective bargaining principle.

The Act's guaranty of the right to freely choose representatives to engage in collective bargaining in their behalf is further predicated upon the principle that the employees' interests are distinct and separate from that of the employer's. Even though there are many areas in which the employer's and employees' interests coincide and are reconcilable, nevertheless, the struggle for a greater

share of the wealth renders their interests in a sensitive area separate and distinct.

Many theorists regard every company union founded on a plan or organization, which is limited in membership to the employees of one plant or employer, as a negation of the right of employees to bargain collectively. The Act, as interpreted by the Board with support from the Courts, has not applied such a broad interpretation to every company union. Rather, only those company unions which are employer-dominated have been found by the Board to be so tainted that they are incapable of engaging in *bona fide* collective bargaining with their employees. There can be little quarrel with this holding of the Board as it is axiomatic that an organization cannot at once be an independent labor organization and under the control of and dominated by the employer. Employer control or domination of a labor organization is manifested in numerous forms and varieties. Each situation stands separate and distinct from another. However, certain *indicia* have a direct nexus and are peculiar to employer dominated labor organizations. While the presence of a single or even several criteria cannot by themselves warrant a conclusion of employer domination, the particular *indicia* under scrutiny need not be present in numerical abundance in order to sustain a conclusion that a labor organization is employer-dominated.

B. *Preliminary Findings*

In order to avoid any semantical confusion of what the undersigned said in his original Decision or what may be said hereinafter in this Supplemental Decision, it is necessary to fix and define with more exactitude the Dennison Employees Committee, herein sometimes called the Committee. The Committee meets the technical require-

ments of Section 2(5) of the Act to the extent that it constitutes, as I have found, a labor organization within the meaning of the Act. It is not composed of all the employees of Respondent; in fact the overwhelming majority of employees[4] have no membership in the Committee. Respondent's employees, who meet the eligibility requirements under the constitution of the Committee merely have a right to vote for a departmental representative. The available evidence shows no restriction or method from which it could be argued that each representative thus elected represents an equal number of employees. Additionally, those of Respondent's employees who meet certain constitutional requirements are eligible to be elected as departmental representatives. It is these representatives, 43 in number under the latest count, who compose the General Body and who have membership in the Dennison Employees Committee. Additional members of the Committee are those management representatives,[5] who are designated by management to serve on the different conference committees. Thus the employee representation plan involved in this case provides for representatives of employees and representativese of management. It is these representatives of employees and the representatives of managment who are members of, and constitute, the Dennison Employees Committee.[6] The General Body, the various subcommittees, and the conference committees have their duties and functions

[4] There are approximately 2,000 employees.

[5] It is stipulated that all management representatives are supervisors within the meaning of the Act.

[6] My original Decision is corrected in this regard. In my original Decision, reference was made to the General Body and the Committee in terms which would indicate that one was the equivalent of the other. Clearly, this is incorrect. Under the constitution, the General Body is merely a segment of the Committee. Fitch is the president of the General Body. Apparently, the Committee has no officers but operates through the committees and does not meet as a group.

described in the constitution of the Committee. Employee representatives alone have membership in the General Body and the subcommittees. As they are subject to the constitutional provisions, their indepedent functions are thereby limited and their activities under the constitution are intertwined with the management representatives in the various conference committees.

Counsel for Respondent and the Committee[7] have attempted to minimize the role of the procedure committee by stating it is only a steering committee. The dictionary defines "steering committee" as follows:

> a managing or directing committee; a committee composed of leaders of the majority caucus that determines the order in which business shall be taken up in a U. S. legislative body.[8]

Consequently, even if the label of "steering committee" is applied to the procedure committee, it emerges as the most powerful committee of the Committee as it must approve the agenda and the order of business of the General Body and in this manner constitutes the managing and directing committee of the Committee. The composition

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[7] It should be noted that to the extent management is represented on the Committee, counsel for the Committee is in effect representing management while counsel for Respondent likewise represents the Committee to the extent of Respondent's interest in the Committee. I mention this because of Respondent counsel's insistence that he was privileged to cross-examine Fitch, the General Body president as an adverse witness. Moreover, the evidence shows that both counsel met prior to the hearing together with Fitch, Allen and other representatives of the Committee to discuss the evidence to be presented. I am not critical of the collaboration between counsel; but I believe that this fact affects counsel's asserted right to cross-examine Fitch.

[8] *Webster's Third New International Dictionary*, unabridged, 1963.

of the procedure committee,[9] establishes the fact that it is composed of the leaders of the Committee. However, the constitution of the Committee even gives greater powers to the procedure committee. Section 2 of the constitution provides: "... Whenever the management or the Employee Committee has prepared a recommendation for the consideration or action of the other, the recommendation shall first be sent to the Committee on Procedure...."

This section further provides that while this committee may not take any direct action on matters "except those which relate directly to the revision of the constitution and By-Laws, or to other matters of procedure, . . . [it] shall determine whether the recommendation is of sufficient importance to be referred to the appropriate Standing Conference Committee." If there is no appropriate conference committee, the procedure committee may create one. All such committees, including the procedure committee, consists of from two to six members, one half of whom are management representatives. It is plain therefore that management, by its right to equal representation on the conference committees and on the procedure committee, can exercise a veto over any effective action by the General Body or any other subordinate committee. I am not overlooking that Section 2 also provides that the General Body can appoint a special committee to handle a problem regardless of the powers of any standing committee. But this provision hardly supplies the means whereby the General Body may exercise true independence. Section 3 of the Constitution provides an additional obstacle in that, "... no

[9] Cf. *Nassau & Suffolk Contractors' Association*, 118 NLRB 174. Here, unlike in the *Nassau* case, management members of the Committee include executives and officers of the Respondent. Management representatives on the procedure committee were, Allen, personnel director and chief negotiator, and D. F. Prince, general manager of therrimage. Employee members were Fitch, president of the General Body and : vice-chairman, C. Merlini.

action or conclusion of any Conference Committee, except the action of the Committee on Procedure in creating special Conference Committees and Classification and Classification Committees on Classification, shall be binding unless and until it is expressly authorized or ratified by the Management and by the Employee Committee."

Thus, management approval is required to finalize any recommendation, even when made by a committee of the Committee on which management has equal representation.

Respondent's counsel insists that the Trial Examiner grossly erred when he stated in his Decision, ". . . the constitution of the Committee provides that no changes therein may be made without management approval, hence a rank-and-file movement to change the structure or approach would be doomed to failure from its inception *unless management approved*."[10]

In support of this position Fitch's testimony is quoted, as follows:

> Q. (By Chandler) And as to amendments which do not affect the relationship between the Employees Committee and management, is there any need to go to management?
>
> A. No.

The crucial point on this issue is whether a rank-and-file movement to change the *approach* or structure would alter the *relationship* between the Committee and management and thus require management approval under the terms of the constitutional provision. Counsel, in posing the above question to Fitch, specified the exclusion of "amendments" which do not affect the "relationship." The question and answer, therefore, are irrelevant to the precise issue and have no evidentiary value as it evades and excludes the crux of the question.

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[10] Trial Examiner's Decision, pp. 10-11.

Other evidence, like the amendment to the constitution concerning the calling in of a mediator, establish the soundness of the conclusion reached by the undersigned. The evidence showed that in April 1965, in order to permit the General Body to request the State or Federal Mediation Service, it was necessary to amend the constitution in accordance with Article VIII. Additionally, there are many clauses in the constitution, if changed, that would "affect the relationship between the Employee Committee and Management." As the constitution is the very instrument by which the Committee is governed, it seems rather redundant to say that this constitutional provision (article VIII) enshrines the structure of the Committee subject to change only with management approval. The plain words of this article hardly need further explication as its intent and meaning is quite apparent. Accordingly, I reiterate my finding that a rank-and-file movement to change the structure or approach of the Committee would be doomed to failure from its inception *unless management approved.* Especially is this true when the constitution itself makes no provision for the participation of rank-and-file employees in the affairs of the Committee.

Respondent's brief refers to the following interchange:[11]

> Trial Examiner: So the Procedure Committee has no veto power over a Conference Committee report?
>
> Fitch: No, it's a steering committee.
>
> Trial Examiner: Well, but can the Procedure Committee prevent it going to the General Body?
>
> Fitch: It never has.
>
> Trial Examiner: Could they?
>
> Fitch: I don't believe so.

[11] Transcript pp. 81-82, first hearing.

In the face of the plain meaning of the constitutional provisions referred to above, I find that Fitch's replies and conclusions as quoted above display a determined reluctance to face the realities of the constitutional provisions which control the operations of the Committee.

I can only conclude that the Committee affords the employee representatives opportunities to discuss, to negotiate, to air grievances, to suggest improvements, and to enter into arbitrations but none of these things may be done as a matter of right. At any stage of these activities, management by its equal representation in the various committees and by the constitutional provisions discussed above, can bring all debate, discussion, and activity to a halt and initiate its own program without further consultation with the employee representatives. On at least one occasion, the incentive plan of 1964, management did exactly that after the General Body refused to approve the institution of the proposed incentive plan. On that occasion, the General Body without any resources, and without independence had no alternative but to accept management's decision.[12]

As described above, the General Counsel and the Charging Party rested on the record in the earlier hearing. By agreement with counsel for Respondent, counsel for the Committee proceeded to adduce additional evidence. The first and only witness called by counsel for the Committee was Ambrose H. Fitch, President of the General Body of the Dennison Employees Committee.[13]

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[12] Respondent attempted to adduce evidence that the Bookbinders lost an arbitration decision concerning a grievance instituted because the Respondent inaugurated an incentive plan without the Bookbinders' approval. As the arbitrator in that situation determined that the collective bargaining agreement between the parties permitted Respondent's unilateral action, it had no relevancy to the instant proceedings. The evidence concerning the Bookbinders was rejected by the undersigned for that reason.

[13] The record shows that Fitch has been president of the Gen-

The available evidence indicates that the employees, subject to the eligibility rules of the constitution of the Committee, vote once each year for a representative of the department in which they are employed. This is the extent of participation by the rank-and-file employees of the Respondent in the affairs of the General Body or the Committee. The employee representatives so selected compose the General Body of the Dennison Employees Committee. The remaining rank-and-file employees have no general meetings; they are not consulted; they do not acquiesce in or ratify any decisions of the General Body or the Committee; they do not pay dues; they do not select any officers, and they have no voice in any action of the General Body or the Committee. An employee representative, in effect, receives a blank check and becomes part of an exclusive club that has many privileges. Each representative serves on several committees; associates in committees with management representatives; receives payment for all time spent in committee meetings or Committee business; and obviously attains a position of stature in the plant. The available evidence shows that there is no attempt to apportion the districts so that each representative represents an equal number of employees and it is established that certain employees, like the president of the General Body of the Committee, are members of a craft union. Indeed, the president of the General Body and all members of other craft unions partici-

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eral Body for approximately three years, that he is a member of the ITU, and that he is employed in a bargaining unit represented by the ITU. Nevertheless, Fitch votes for employees representatives of the Committee, has been elected as an employee representative of the Committee, and actively participates on various other committees of the Committee. Fitch's testimony was adduced, in large measure, through leading questions propounded by both counsel for the Committee and counsel for Respondent. Fitch readily cooperated by giving the answers desired with few exceptions. I have given little or no weight to Fitch's testimony where it is conclusionary or contradicts the plain meaning of the documents in evidence.

pate in voting for the employee representatives who compose the General Body.

The participation of the craft employees seems rather strange as they would appear to have little or no community of interest with Respondent's other employees.

During the course of the remanded hearing, counsel for the Committee and counsel for Respondent laid great emphasis on the arbitration machinery. However, a fair reading discloses that arbitration is not compulsory. Management can refuse to go to arbitration, if it chooses. The evidence that management, in the past, has not refused to go to arbitration when requested by the central committee and the General Body does not contradict the plain meaning of the arbitration proviso.[14]

At any rate, the evidence of arbitration, the negotiation sessions of the fringe and wage committee, and that of the processing of grievances merely indicate that the Committee meets the technical qualifications of a labor organization under the Act. Such evidence, while relevant to consideration on the question of domination, is far from controlling. Its significance is completely undercut when consideration is given to the basic structure of the Committee under the constitutional provisions which establish management's equal representation on the key committees and the powerful procedure committee.

The voluminous documents submitted in evidence by the Committee's counsel, while impressive in quantity, woefully faily to impress by their quality. An inspection[15] of the

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[14] The management representative and representative chosen by the central committee must agree on a third member to enable arbitration to proceed. Clearly if management refuses to agree, arbitration is frustrated. Moreover, Respondent pays the arbitrator and all arbitration expenses. A refusal to finance would terminate arbitration.

[15] The undersigned has carefully read each document and has reread and carefully studied most of them.

documentary evidence lends support to the basic defects in the Committee's structure and its inability to function as a genuine labor organization.

The Commitee introduced an incomplete file of the 1961 negotiations[16] of the fringe and wage committee.[17] One of the documents[18] is the minutes of a joint negotiation meeting at which all members were present. John Joyce, an employee representative, during the course of the meeting is quoted as having said, "Someone brought out yesterday why when companies deal with a union it is usually the union who says 'this is it,' but with us it is never that way; it is always the company that says, 'take this or else.' "

Robert Davis, another employee representative then added, "Some groups have said, 'you get what they want to give you and that's all' and our people tell us to get in there and fight for something."

Finally, W. A.,[19] a third employee representative, then said, "Possibly this year is not as good as some according to you, but even though you have *good* years, we never get what we ask for . . . so we don't see how we can win either way."

Richard L. Allen, Respondent's personnel director in charge of labor relations, a member of this committee,

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[16] Apparently the selection of the 1961 negotiations was made to demonstrate that the "give and take" of the bargaining sessions was comparable to that engaged in by independent unions.

[17] Membership of this committee is composed of an equal number of employee representatives and management representatives. However, employee representatives and management representatives apparently do meet separately and then meet jointly. For purposes of this Decision. I signify the joint meetings as negotiation sessions. This statement is made not to disparage the wage and fringe committee, but in order not to minimize the ever active knowledge that management does have the final decision by virtue of its veto power.

[18] Party to the Contract Exhibit No. 22-M.

[19] I identify W. A. as Gregory Alluzio.

representing management, then closed the meeting with the following statement, "We will give this matter very serious consideration. Today we wanted to receive your requests and get in as many facts as possible, I can't say now when we can meet again, but we will advise your chairman when it seems possible."

I deduce from the above, that the employee representatives, in a moment of frankness and frustration, expressed the futility and sham of the negotiation procedures. It is further obvious by this interchange that the joint sessions were held at the convenience of management and at the orders of management rather than at the mutual convenience of both parties.

Another joint meeting of this committee was held on October 31, 1961.[20] At this time, an unidentified member of the committee, presumably a management representative, said, "Management is overly generous. We have arrived at a sticky point, we're willing to reshuffle." "J. C.," (John Connor) an employee representative then said, "Bring in a mediator."

Whereupon, "R. W." (Richard Wallis) a director of Respondent and a member of this committee replied, "This would be a regrettable move."

Here, management voices a clearly discernible threat when signs of revolt appear. Another report of a meeting is set out in full below:[21]

> The wage and fringe committee met this morning at 8 a.m. and discussed our position, and could not find anything we could change or reshuffle to make this proposal offered by management anything we would *want* to bring to the general body.

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[20] Party to the Contract Exhibit No. 22-N.
[21] Party to the Contract Exhibit No. 22-Y.

Management came in at 10 a.m. and had nothing new to offer at this moment we are waiting for Mr. Wallis to come in at the meeting.

Mr. R. Wallis gave his views on the picture of business as Dennison Directors see it and still stated the offer they gave us was a generous offer.

We discussed retroactivity to great lengths. Management requested a recess.

Management came back and *told* us, explain to the general body that if they are willing to accept this proposal we will throw in October 1, retroactivity." [Emphasis Supplied].

The complete transcript of P.C. Ex.-22-M for October 24, 1961, establishes the fact that management considered the wage and fringe employee representatives not as equals but as employees subject to management's orders. Thus, in the October meeting they elicited by questions what had transpired at the meeting of the General Body and in the November meeting *told* the members to take their proposal to the General Body even though, except for the retroactivity to October 7, there was nothing which the employee representatives would *want* to take to the General Body.

Turning to the central committee upon which Respondent and Committee counsel laid great stress, it is apparent that it lacks ability to function not only because of its internal weaknesses, but also because of the limitations on matters concerning which it can grieve. As Fitch testified, a grievance may be filed only where management violates matters covered in the Foreman's Handbook[22] or in the constitution. This Handbook, consisting of about 150 pages, is in the possession of foremen and representations of the General Body. There is no evidence that a rank-and-file employee

[22] Trial Examiner's Exhibit No. 1.

has access to it or knows what it contains. I assume that if any employee felt that he might have a grievance, he could discuss the matter with a foreman or a representative and the appropriate section would be pointed out. This is a far cry, however, from the right of an employee to secure a copy of the union contract where there is a contract covering employees. Nevertheless, Respondent insisted that all matters covered by previous agreements between Respondent and the Committee are included in the Foreman's Handbook. If this is so, the employees are entitled to have a copy to take home, to study and to keep. But this is not the case in Respondent's plant. Moreover, the rules arrived at by mutual agreement and the rules promulgated by management are indistinguishable in this book. As it bears the title of Foreman's Handbook, it would indicate that very little of its contents is considered a matter of mutual agreement. The wording of the contents of the Foremen's Handbook reinforces this belief.

In connection with the reference to mediation, it should be noted that not until April 5, 1965, did the Committee obtain the right to resort to this technique for the possible solution of matters in controversy. This was accomplished by an *amendment to the constitution of the Committee and required Respondent's consent.* This sharply brings into focus the extent of Respondent's control over the Committee's procedure for dealing with Respondent. A union, truly independent and dealing at arm's length, would hardly require an amendment to its constitution to call in a mediator. Moreover, the incident tends to explain Wallis' remark during the 1961 negotiations when the question of mediation was raised by Conners that "This would be a regrettable move."

The evidence showed that records of the key committees of the Committee are under the control of management and may be examined only with management approval. Mary Lynch, an employee in the personnel department, under the

supervision of Allen, the chief negotiator and personnel director of Respondent, has custody of the current files of the Committee. These files are kept in the personnel department and Mary Lynch has the key to the files. Lynch also prepares [illegible] procedure [illegible] documents pertaining to [illegible] in a locked room to which Hayward has the key. Hayward was identified as an assistant in personnel.[24] Fitch's testimony shows that it was necessary for him to ask permission to inspect and remove Committee documents from this room.

C. *Concluding Findings*

A collective bargaining agreement is one of the most precious documents and is a valuable property to an employee. Like other agreements establishing property rights, it is a legal document enforceable in the Courts. Like many other rights, the protections and benefits contained in a union agreement must be understood by each member if they are to be fully realized and safeguarded. Certainly, unless an employee possesses a copy of the union agreement to study at his leisure, he cannot understand his rights under the agreement nor his conditions of employment. It is well established and admitted by all the parties that the Committee, in its various forms of existence since 1920, has not at any time been signatory or party to a comprehensive labor agreement. It is true that a labor organization which does not enter into a written, comprehensive labor agree-

[23] All reports of committees, including that of the General Body, must go through the procedure committee. It is argued that this is a routine or ministerial act. However, the latent power to nullify or obstruct is ever present.

[24] Hayward's status as a supervisor under the Act was not established. However, this is of no consequence as it was admitted that Allen supervises him.

ment, is not, thereby, *per se*, an employer dominated union. But, surely, such a factor must be given considerable weight when it has persisted over a protracted period of time, 47 years in this case. A truly independent union could not and would not [illegible] reasonable [illegible] Act, [illegible] the terms [illegible] situation is the complete ignorance of the employees of those agreements, rules, regulations, and working conditions except upon consultation with a foreman or an employee representative. Indeed, even the constitution governing the Committee is available to employees only upon request. It seems rather valid to infer under the circumstances that an employee making a request for a copy of the constitution or a copy of the Foreman's Handbook, would, at the very least, draw undue attention to himself. Thus, it is clear that the foregoing distinctions between the Committee and truly independent labor organizations are legitimate considerations in the determination whether or not the Committee is an employer dominated company union.

As set forth in my original Decision, the Committee has no funds, collects no dues, meets on company premises, utilizes company stationery and other facilities, posts notices on the bulletin board only with company approval, and even submits its records to the company for safekeeping. All of the foregoing constitute additional valid considerations in the determination whether the Committee is employer dominated. Independent unions do not exist on their employers' largesse. The Committee does. As I have previously found, the Committee could not and would not exist except for the substantial financial contributions of Respondent. The significant amounts of money expended

[25] *H. J. Heinz & Co.*, 311 U.S. 514.

by Respondent and the other factors enumerated above go far beyond a reasonable interpretation of "co-operation" between an employer and a labor organization.

The evidence disclosed that Respondent could and did eliminate departments at will.[26] Automatically, such an elimination terminates the term of the employee representative of that department. This is not a casual circumstance but rather indicative of the employer's control over the composition of the employee representatives making up the General Body. Discharge of an employee representative likewise eliminates such a representative from the General Body. This is another, not insignificant, means by which employee representatives may be controlled.

The failure to have even one general meeting of the employees since the formation of the Committee in 1920; the participation of members of other unions in the selection of employee representatives; the selection of members of other unions as employee representatives; the restrictive eligibility rules governing the right of employees to vote and be selected as employee representatives; and the eligibility of employees in the personnel department to vote and be elected as employee representatives are additional factors worthy of consideration in the determination whether the Committee is employer dominated.[27]

Finally, as I have indicated above, the Committee, under its constitutional provisions, consists of management and

[26] This is so, even assuming that the primary concern was efficiency and economy of operation.

[27] Democracy does not spring into being the mere grant of the right to vote. It runs much deeper. In the American scheme, it includes the bill of rights, the system of checks and balances, and the pervasive, traditional, national spirit of freedom. The collective bargaining principle of industrial democracy which the Act seeks to encourage cannot be nurtured nor satisfied by the mere grant to rank-and-file employees of the right to vote, once each year, for an employee representative.

employee representatives. Such a labor organization is repugnant to the declared purposes and policies of the Act.[28]

It may well be, as it is argued, that this plan of employee representation has maintained industrial peace at Respondent's plants for 47 years, but this is not the methodology established by Congress to achieve that end. To argue, in the year 1947, that benevolent paternalism constitutes a better frame work for the elimination of industrial strife, seems an exercise in futility. At the very least such an argument must be addressed to Congress.

In concluding this Decision, I reaffirm the findings, rulings, and conclusions in my original Decision except to the extent noted.

I conclude that the Dennison Employees Committee is an employer dominated company union, subject to the control of Respondent, and exists at the whim and caprice of Respondent; that the bargaining engaged in, even in joint committee sessions, is a sham and subterfuge which effectually deprives the employees of their rights under Section 7 to freely choose representatives for the purpose of collective bargaining; that the organization, structure and operation of the Committee merely furnishes the employees with a semblance of their rights under the Act but lacks character and substance.

The evidence shows that the existence of the Committee has proven a barrier to the realization by Respondent's employees of their statutory rights under Section 7 of the Act. It thereby serves as a means of thwarting the policy of collective bargaining.[29] Under well established

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[28] Cf. *Nassau & Suffolk Contractors' Association, supra.*

[29] *N.L.R.B.* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261. It is rather striking to note the many similarities between the instant case and the *Greyhound* case, particularly the affect of equal representation of management on the key committees.

precedent, such a labor organization must be disestablished. I shall so order.

The remedy recommended in the undersigned's original Decision, (V. The remedy), is hereby rescinded and the following is substituted therefor.

III. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action in order to effectuate the policies of the Act.

Having found that Respondent has violated Section 8(a)(1) and (2) by contributing financial and other support to the Committee, has interfered with the administration of the affairs of the Committee; and has dominated the Committee thus rendering the Committee incapable of truly representing the employees as a *bona fide* collective bargaining representative of any Respondent's employees, I shall recommend that it cease and desist from so assisting and interfering, that it withdraw and withhold recognition from the Committee as representative of any of its employees, that it completely disestablish the Committee as the collective bargaining representative of any of its employees, and that it cease giving effect to any agreements with the Committee executed or renewed during the 6-month period immediately preceding the filing of the charge.[30]

I shall further recommend that in the representation

[30] Nothing in this recommendation shall be construed to require Respondent to vary wages, hours, seniority, or other substantive features of its employees' working conditions which may have been established pursuant to any prior agreements or understandings.

proceedings, the Board vacate and set aside the elections of June 15, 1965, and direct new elections at a time found appropriate by the Regional Director of the First Region of the National Labor Relations Board.

As the unfair labor practices committed by the Respondent are of a character striking at the very roots of employees' rights safeguarded by the Act, it will also be recommended that Respondent cease and desist from infringing in any manner upon employee rights guaranteed in Section 7 of the Act.

Upon the foregoing factual findings and conclusions, I come to the following:

Conclusions of Law

1. Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act by its domination of the labor organization known as the Dennison Employees Committee.

2. All conclusions of law set forth by the undersigned in his original Decision are hereby affirmed and are hereby incorporated by reference.

The Recommended Order issued by the undersigned in the original Decision is hereby rescinded and the following Recommended Order is substituted:

Recommended Order

On the basis of the foregoing findings of fact and conclusions of law, and the entire record in the case, including the record of the remanded hearing, I recommend that Respondent, Dennison Manufacturing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Contributing financial or other support to the

Committee or any successor thereto.

(b) Recognizing the Committee, or any successor thereto, as the representative of any of its employees for the purpose of bargaining collectively concerning wages, hours, and working conditions

(c) Enforcing or maintaining any agreement, oral or written, with the Committee entered into or renewed within the 6-month period preceding the filing of the charge to the present time, or any modifications, extensions, supplements, or renewals thereof; *Provided*, that nothing herein shall be construed as requiring Respondent to vary wages, hours, seniority, or other substantive features of its employees' working conditions which may have been established.

(d) In any manner interfering with, restraining or coercing its employees in their rights to self organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which I find will effectuate the purposes of the Act:

(a) Withdraw and withhold recognition from the Committee, or any successor thereto, as the collective bargaining representative of any of its employees.

(b) Completely disestablish the Dennison Employees Committee as representative of any of its employees for the purpose, in whole or in part, of dealing with it in respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work.

(c) Post at its plants in Framingham, Maynard,

Hudson and Marlboro, all of which are in Massachusetts, copies of the attached marked "Appendix".[31] Copies of such notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the Respondents' authorized representative, be posted by the Respondents immediately upon receipt thereof and maintained by them for a period of sixty (60) days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the First Region, in writing, within twenty (20) days from the date of the receipt of this Supplemental Decision and Recommended Order what steps Respondent has taken to comply herewith.[32]

IT IS FURTHER RECOMMENDED that Case Numbers 1-RC-8287 and 1-RC-8350 be severed from Case No. 1-CA-5080 and be transferred to the Regional Director for processing in conformity with the Decision herein.

Dated: Apr. 20 1967.

(s) DAVID E. DAVIS
David E. Davis
Trial Examiner

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[31] If this Recommended Order is adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. If the Board's Order is enforced by the United States Court of Appeals, the notice will be further amended by the substitution of the words "A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER" for the words "A DECISION AND ORDER." N.B. "Appendix" in the original Decision is hereby rescinded.

[32] If this Recommended Order is adopted by the Board this provision shall be modified to read: "Notify the Regional Director of the First Region, in writing, within 10 days from the date of this Order what steps the Respondent has taken to comply herewith.

APPENDIX B

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDED ORDER OF A TRIAL EXAMINER OF THE
NATIONAL LABOR RELATIONS BOARD
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NATIONAL LABOR RELATIONS ACT
(AS AMENDED)

we hereby notify our employees that:

WE WILL withdraw and withhold recognition from DENNISON EMPLOYEES COMMITTEE, or any successor thereto, as the representative of our employees.

WE WILL completely disestablish DENNISON EMPLOYEES COMMITTEE as representative of any of our employees for the purpose, in whole or in part, of dealing with us in respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work

WE WILL NOT aid, assist or contribute financial or other support to DENNISON EMPLOYEES COMMITTEE or any successor thereto.

WE WILL NOT recognize DENNISON EMPLOYEES COMMITTEE, or any successor, as representative of our employees.

WE WILL NOT enforce or maintain any agreement oral or written, entered into with DENNISON EMPLOYEES COMMITTEE since January 20, 1965 or any modification, extension, supplement, or renewal thereof.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their rights to organize; to form, join, or assist a labor organiza-

tion; to bargain collectively through a bargaining agent chosen by themselves; to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; or to refrain from any such activities (except to the extent that the right to refrain is limited by the lawful enforcement of a lawful union-security requirement).

DENNISON MANUFACTURING COMPANY
(Employer)

Dated _____

By _____

_____

(Representative) (Title)

Dated _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 20th Floor John F. Kennedy Building, Cambridge & New Sudbury Streets, Boston, Massachusetts 02203 (Tel. No. 223-3300).

168 NLRB No. 131

D-467
Framingham, Mass.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DENNISON MANUFACTURING COMPANY
and
Case No. 1-CA-5080
UNITED PAPERMAKERS AND PAPERWORKERS,
AFL-CIO
and
DENNISON EMPLOYEE COMMITTEE
PARTY TO THE CONTRACT

Cases Nos. 1-RC-8287
1-RC-8350

DENNISON MANUFACTURING COMPANY
EMPLOYER
and
UNITED PAPERMAKERS AND PAPERWORKERS,
AFL-CIO
PETITIONER

DECISION, ORDER, AND DIRECTION OF SECOND ELECTIONS

On May 2, 1966, Trial Examiner David E. Davis issued his Decision in the above-entitled consolidated proceeding, finding that Respondent violated Section 8(a)(2) of the National Labor Relations Act, as amended, by contributing financial and other support to the Dennison Employees Committee, and recommending that it cease and desist therefrom, and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Ex-

aminer also found merit in certain objections to the elections filed in Cases Nos. 1-RC-8287 and 8350, and recommended that new elections be ordered.

Thereafter, the Respondent and the Dennison Employees Committee filed exceptions to the Trial Examiner's specific 8(a)(2) findings, and briefs in support of such exceptions; the Charging Party filed cross-exceptions to the Trial Examiner's failure to find domination; and the General Counsel filed no exceptions, but, in his brief, urged the National Labor Relations Board to find that Respondent unlawfully dominated the Dennison Employeyes Committee in view of the evidence adduced at the hearing.

The Board, on November 1, 1966, issued an Order, finding the allegation of a violation of Section 8(a)(2) in the complaint sufficient to include an allegation of Employer domination, and remanding the proceeding to the Trial Examiner for further hearings to afford Respondent an opportunity to raise any defenses, and to enable the parties to adduce additional evidence and present legal argument on that issue. Thereafter, on November 17, 1966, the Board denied Respondent's motion for reconsideration of the Board's Order as well as its request for oral argument before the Board.

A further hearing was conducted on February 13 and 14, 1967, before Trial Examiner Davis. Pursuant thereto, the Trial Examiner issued his attached Supplemental Decision on April 20, 1967, affirming his earlier conclusions and further finding, based on the record as a whole, Employer domination of the Dennison Employees Committee. Accordingly, he recommended disestablishment of the Committee. Thereafter, the Respondent and the Dennison Employees Committee filed exceptions to the Trial Examiner's Supplemental Decision and supporting briefs, and the General Counsel filed a brief in support of the Supplemental Decision.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearings herein and finds that no prejudicial error was committed.[1] The rulings are hereby affirmed. The Board has considered the entire record in these cases, including the evidence adduced at both hearings, the Trial Examiner's Decision and Supplemental Decision, and the exceptions thereto and briefs, and hereby adopts the findings,[2] conclusions, and recommendations of the Trial Examiner's decisions.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations

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[1] The Respondent contends that the Trial Examiner's refusal to conduct a hearing *de novo* and admit all relevant evidence without regard to the earlier hearing, indicated his bias or prejudgment of these cases and denied Respondent a fair hearing. We reject Respondent's contention of bias. The Respondent argues basically that evidence was excluded and that the Trial Examiner's rejection of offers of proof tainted the hearing notwithstanding his later reversal of that ruling. In fact, the record shows that not only were all offers of proof permitted, but testimony of witnesses was admitted without regard to whether similar evidence had been adduced at the earlier hearing. Further, Respondent and the Committee have not specified any evidence in support of Respondent's defense which they assert they were not allowed to adduce, and our review of the record reveals none. Accordingly, there is no showing of prejudice to the parties.

[2] In adopting the Trial Examiner's finding of unlawful domination, we rely, *inter alia*, upon Respondent's control over the administration of the Committee's day-to-day affairs via representation on its important Committee on Procedure, as revealed by the "Constitution" of the Committee which was received in evidence, as well as Respondent's implicit power, by virtue of the structure of the Committee, to control not only the composition but the continued existence of the Committee through exercise of its managerial authority. *Tuscarora Plastics Co.*, 167 NLRB No. 154; *The Carpenter Steel Company*, 76 NLRB 670.

Board adopts as its Order the Recommended Order of the Trial Examiner, dated April 20, 1967, and orders that the Respondent, Dennison Manufacturing Company, Framingham, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the said Recommended Order of the Trial Examiner, as herein modified:

Delete from paragraph 2(c) of the Trial Examiner's Recommended Order that part thereof which reads "to be furnished" and substitute therefor "on forms provided. . . ."

IT IS FURTHER ORDERED that the elections held on June 15, 1965, in Cases Nos. 1-RC-8287 and 8350, be, and they hereby are, set aside, and that such proceedings be, and they hereby are, remanded to the Regional Director for Region 1 for the purpose of conducting new elections at such time as he deems circumstances permit the free choice of a bargaining representative.

DIRECTION OF SECOND ELECTIONS

Second elections by secret ballot shall be conducted among the employees in the appropriate units at such time as the Regional Director for Region 1 deems appropriate. The Regional Director shall direct and supervise the elections, subject to National Labor Relations Board rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period immediately preceding the date of issuance of the Notice of Second Elections, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their re-

placements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by United Papermakers and Paperworkers, AFL-CIO.

Dated, Washington D.C. Dec. 27, 1967.

FRANK W. MCCULLOCH,
Chairman
JOHN H. FANNING,
Member
HOWARD JENKINS, JR.,
Member
NATIONAL RELATIONS BOARD